

20. 7478
No. 11029

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

LA SOCIETE FRANCAISE DE BIENFA-
ISANCE MUTUELLE, a corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

APR 1 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States for the
Northern District of California, Southern Di-
vision

22967-S

LA SOCIETE FRANCAISE DE BIENFAIS-
ANCE MUTUELLE, a corporation,
Plaintiff

vs.

UNITED STATE OF AMERICA,
Defendant

COMPLAINT

Plaintiff complains of defendant and for cause
of action alleges:

I.

Plaintiff is now, and ever since June 7, 1856, has
been a corporation incorporated pursuant to and in
accordance with Chapter VIII (relating to "Re-
ligious and other Associations or Societies") of the
California Corporation Act of 1850. Its residence,
office and principal place of business are in the
City and County of San Francisco, State and
Northern District of California. It was incor-
porated as the successor of, to take charge of the
estate and property belonging to, and to transact
all affairs relative to the temporalities of, and un-
incorporated beneficial society of the same name
founded in San Francisco December 28, 1851, for
the purpose of caring for and treating the sick
without profit.

II.

Plaintiff's sole purpose ever since its incorporation [1*] has been, and now is, the care and treatment of the sick without profit. To that end it has always maintained, and now maintains, a non-profit hospital. It is now, and ever since August 14, 1935 has been, a charitable corporation within the meaning of Section 811 (b) (8) of Title VIII and of Section 907 (c) (7) of Title IX of the Social Security Act and of the corresponding provisions of the Federal Internal Revenue Code.

III.

Plaintiff has not now, and has never had, any capital stock. No dividends, interest, sick or death benefits, or other pecuniary benefits or distributions are now, or have ever been, paid to any one. No part of its net earnings enures, or ever has enured, to the benefit of any private shareholder or individual.

IV.

Plaintiff's affairs are now, and for many years prior to August 14, 1935, have been managed by a board of fifteen directors, elected annually by the members, and who serve without any fee, salary, or other compensation whatever.

V.

Plaintiff has been able to acquire and enlarge its present hospital plant and facilities mainly through testamentary and other gifts and the in-

*Page numbering appearing at foot of page of original certified Transcript of Record.

come therefrom. Receipts from members would not have been sufficient therefor. The assets acquired by plaintiff in 1856 from its predecessor had largely consisted of charitable gifts and donations. Since 1851, gift, legacies and devices have aggregated approximately Three hundred and fifty-seven thousand three hundred and twenty-two and $56/100$ (357,322.56) dollars. In the absence thereof, plaintiff could not have acquired, improved or enlarged its present plant nor afford the facilities which it now furnishes. There now is carried on plaintiff's books a reserve amounting to Two hundred and [2] fourteen thousand seven hundred and seventy-seven and $36/100$ (214,777.36) dollars, of which Seventy-six thousand seven hundred and eighty-three and $87/100$ (76,783.87) dollars is made up of such gifts. By its By-Laws, such reserve is set aside for the improvement, enlargement, and betterment of its plant and facilities. Said Chapter VIII of said Corporation Act of 1850 authorizes it to take and hold property, real and personal, by gift or device, and to take, hold and improve real and personal property and to erect hospitals and other buildings.

VI.

Prior to 1895, plaintiff owned and operated a general hospital in said City and County of San Francisco. In and after 1894 it erected, and has since owned and operated, a general hospital (now comprising eleven buildings) on its block of land in San Francisco bounded by Geary Boulevard, Anza Street and Fifth and Sixth Avenues. It has a

capacity of 225 beds, (seventy-six in private rooms and one hundred forty-nine in wards), and a nursery with fifteen cribs, and is open to the public at large without distinction as to race, creed or color. Said hospital is now, and long has been approved by American Medical Association and American College of Surgeons as a "Class A" Hospital. Its equipment, services and facilities are adapted and available for the treatment of every kind of human sickness. In plaintiff's fiscal year ending February 28, 1943, the average daily number of hospitalized patients was 137.45. The number of patient-days, viz: the total number of days' treatment given to all hospitalized patients, was 63,315. In said year, there were 30,065 consultations by members at, or calls on members by the medical staff outside, the hospital. [3]

VII.

Plaintiff maintains, in connection with said hospital, and ever since 1895, has maintained, at about an average annual cost of about \$12,000 a Training School for nurses for the care of the sick, injured and infirm. It was the first such School organized on the Pacific Coast. It is approved and accredited by the Board of Nurse Examiners of the State of California. There is now, and ever since 1923 has been, situate on said block of land a large four story and basement brick building built and used exclusively as a training home for nurses and devoted wholly to their education, training, lodging and maintenance, when they take a three-year course in connection with the hospital. In addi-

tion, in the main hospital building, there are two fully equipped class rooms for said student nurses and a dietetic school room. There are usually sixty to seventy student nurses enrolled and following the course of study.

VIII.

Said hospital is accredited by American Medical Association for the training of interns, and as such, a scientific and teaching institution for the future physicians. There are usually not less than six interns in said hospital, each of whom is a graduate of an accredited Medical School and takes, at said Hospital, a one-year course in order to obtain a wide field of experience, and where they are directed and trained under the supervision of the medical staff.

IX.

Plaintiff, in said hospital, also maintains, from current income, an Old Peoples Home for the care of aged and feeble members, with a capacity of fifteen beds at all times fully occupied. To said Home there are admitted, for benevolent purposes only, and subject to the discretion of the Board of Directors, (a) members over sixty-five years [4] of age, who pay for their admission thereto a sum of money determined by said Board according to the circumstances of each case, but which sum is not based upon any fixed schedule of rates or upon any profit-making basis, but upon the applicant's needs and ability (if any) to pay and upon social and humane considerations and is not designated

to yield a profit, and (b) members who have been such for at least thirty consecutive years and who are past sixty-five years of age and who, though not ill, are unable, on account of old age or physical disability, to earn a living, no charge being made for their admission.

X.

Plaintiff affords other charitable relief. (a) It provides, at its hospital, two permanent free beds for the treatment of indigent persons under the patronage of La Societe de Secours des Dames Francaises, (French Ladies Relief Society), an independent charitable corporation in San Francisco. (b) It is an agency of the Community Chest of San Francisco, from which it receives about \$1,500 per annum to compensate it for the actual expense to it of service rendered to patients sent it by the Chest, but which service is not intended to, and does not, yield plaintiff any profit. (c) It maintains, at said hospital, a Social Service Department for investigation and follow-up work in Community Chest cases and in other cases referred to or applying to it. (d) It is situated on one of the main traffic thoroughfares of San Francisco, and gives free emergency treatment if necessary, (an average of about 300 annually), to all *deserv*-cases in its neighborhood.

XI.

The number of plaintiff's members is now, and always has been, without limit. It has always admitted, and now admits, new members. Its present membership is 9,645 and at the date of the

various payments hereinafter referred to, its [5] members is averaged about 9,800. It does not solicit, and never has solicited, new members, and has never paid any commission or compensation to any one to obtain new members. It has only one class of members, who pay monthly dues of \$1.75, except (a) life members who pay upon their admission, but whose rights are otherwise the same, and (b) children under fifteen years, one of whose parents is a member, pay one dollar per month.

XII.

Continued payment of members' dues is not, however, necessarily a condition to relief. In the case of indigent member-widows, and of other needy members, such dues, at the discretion of the Board of Directors, are paid from plaintiff's relief fund originally set up in 1905 for that purpose, and since added to. In the Board's discretion, other indigent members are cared for in illness without charge, and are furnished private rooms and other needed facilities. A member under seventeen years of age, if orphaned or abandoned by his parents, pays no dues, nor do student nurses who are members.

XIII.

Members are entitled to the following benefits, either without any charge or at a discount from prevailing prices, viz:

1. Medical and surgical care and consultations are given without charge, to plaintiff's members by staff of physicians specially appointed therefor,

who give consultations either at, or outside of, said hospital;

2. Hospitalization is given, without charge, including operating room service, drugs, dressings, Board and Room, up to and not to exceed six months in any one year, (but in *tuberculosic* cases the time of hospitalization is unlimited), except for a charge of fifty cents per day when hospitalized in a ward, and of about fifty per cent of prevailing prices [6] when hospitalized in private room;

3. Special discounts (from ten to ninety per cent of prevailing prices) on drugs and dressings, and on all X-Ray examinations and treatments, on Diathermy, Hydrotherapy, Physiotherapy treatments, Metabolism examinations, electrocardiograms, and in obstetrical cases.

XIV.

The annual expense of the operation and maintenance of the hospital including the cost of medical, surgical and clinical services to hospitalized and nonhospitalized members, general administrative expense, and the periodical modernization and improvement thereof and of its equipment, is derived from (1) members' monthly dues; (2) admission fees of new members of \$25 and upwards, according to age; (3) income from plaintiff's securities and other investments; (4) donations, legacies and bequests, (5) life membership fees; (6) special admission fees from life boarders; (7) receipts from non-member hospitalized patients, and (8) *an* annual contributions from the Community Chest of San Francisco.

XV.

Whenever, in any year, the funds so received are in excess of the amount of such expenses, such excess is credited to a surplus accumulated in furtherance of the accomplishment of the plaintiff's non-profit purpose. The net deficiency, if any, in any year is paid out of such surplus.

XVI.

Ever since January 1, 1936, and for many years continuously prior thereto, there has been no change in plaintiff's said plan and method of operating said hospital. On July 14, 1937, Charles T. Russell, as Deputy United States Commissioner of Internal Revenue, officially notified plaintiff [7] in writing, that it was "exempt from payment of the taxes imposed by the Social Security Act, approved August 14, 1935, inasmuch as you come within the exceptions provided in Section 811 (b) (8) of Title VIII and Section 907 (c) (7) of Title IX," and, further, that it was "entitled to exemption under the provisions of Section 101 (6) of the Revenue Act of 1936."

XVII.

On February 24, 1939, the then acting United States Commissioner of Internal Revenue officially notified plaintiff, in writing, that "it appears you are not operated for profit and do engage in substantial charitable activities", but that it was not entitled to exemption from income tax under the provision of Section 101(6) of the Revenue Act of 1938 as a corporation organized and operated ex-

clusively for charitable purposes, and that "the ruling contained in Bureau letter of July 14, 1937 is modified accordingly." Said communication further stated that "the status of your organization for Social Security Tax purposes will be made the subject of a separate communication." Thereafter, on April 3, 1939, Victor H. Self, as the acting Deputy Commissioner of Internal Revenue, officially notified plaintiff, in writing, referring to said communication of February 24, 1939, and stating that plaintiff was not entitled to exemption under Sections 811(b)(8) of Title VIII, and Section 907(c)(7) of Title IX, of said Social Security Act.

XVIII.

After the receipt of said communication of July 14, 1937, plaintiff refunded to its employees all the contributions which it had theretofore deducted from their wages pursuant to said Act, and thereafter discontinued such deductions until said communication of April 3, 1939. The taxes payable pursuant to said Act for the period between [8] January 1, 1937, and March 31, 1939, including the tax upon employees' wages, with the penalties and interest thereon, were paid by plaintiff entirely from its own funds, and no part of such payments represents amounts ever deducted or withheld from the wages or income of any employees or ever repaid by any employee in whole or in part.

XIX.

Except only as to the name of the person by whom the same were collected, plaintiff, on the respective dates hereinafter set forth, paid to, and there was collected by, Clifford C. Anglim, as Collector of Internal Revenue for the First District of California, the following amounts for taxes assessed upon it in alleged conformity with said Social Security Act, with interest thereon and the penalties in respect thereof, payment of all whereof had been demanded of it by said Collector;

(a) Taxes assessed and collected allegedly pursuant to Title IX of the Social Security Act, (Sections 1600 and following of Internal Revenue Code), with penalties and interest thereon:

For calendar year 1936:

Tax	\$462.12	
Penalty	115.53	
Interest	95.70	
		\$673.35

Said payments were all made August 10, 1940.

For calendar year 1937:

Tax	\$944.36	
Penalty	236.09	
Interest	139.01	
		\$1,319.46

Said payments were all made August 10, 1940.

For calendar year 1938:

Tax (in part)	\$1,484.32	
Penalty	371.09	
Interest	129.58	
		\$1,984.99

Said payments were all made August 10, 1940. [9]

For calendar year 1939:

Tax (in part)	\$1,424.61	
Penalty	253.50	
Interest	39.84	
	<hr/>	\$1,717.95

Said payments were all made August 10, 1940.

For calendar year 1940:

Tax—\$812.65 paid January 16, 1941.

For calendar year 1941:

Tax—\$805.66 paid January 27, 1942:

(b) Taxes, penalty and interest assessed and collected allegedly pursuant to Title VIII of the Social Security Act, (Sections 1400 and following of Internal Revenue Code).

For calendar year 1937:

Tax	\$5,229.96	
Penalty	1,307.49	
Interest	990.36	
	<hr/>	\$7,527.81

Said payments were all made October 26, 1940. Of said sum of \$5,229.96, one half, or \$2,614.98, represented employees' contributions paid by plaintiff from its own funds.

For calendar year 1938:

Tax	\$5,750.92	
Penalty	1,437.74	
Interest	664.44	
	<hr/>	\$7,853.10

Said payments were all made August 10, 1940. Of said sum of \$5,750.92, one half, or \$2,875.46, represented employees' contributions paid by plaintiff from its own funds.

For calendar year 1939:

Tax	\$ 17.59	paid July 15, 1939
Tax	21.95	paid Oct. 18, 1939
Tax	19.65	paid Jan. 19, 1940
Tax	3,500.11	
Penalty	1,262.31	
Interest	279.47	
	<hr/>	\$5,091.08

Said last three amounts were paid August 10, 1940. Of said sum of \$3,500.11, \$705.33 represented employees' contributions paid by plaintiff from its own funds. [10]

For calendar year 1940:

Tax (first quarter)	\$677.32	
Penalty	12.30	
Interest	16.92	
	<hr/>	\$706.54

Said sums were paid August 10, 1940.

Tax (second quarter)	\$683.50	paid Aug. 10, 1940
Interest thereon	3.42	paid Sept. 6, 1940
	<hr/>	\$686.92

Tax	\$664.62	paid Oct. 17, 1940
Tax	583.24	paid Jan. 16, 1941

For calendar year 1941:

Tax	\$670.34	paid April 15, 1941
Tax	673.47	paid July 5, 1941
Tax	661.21	paid Oct. 13, 1941
Tax	680.50	paid Jan. 12, 1942
	<hr/>	\$2,685.52

For calendar year 1942:

Tax	\$ 710.76	paid April 15, 1942
Tax	716.40	paid July 15, 1942
Tax	719.80	paid October 9, 1942
	<hr/>	\$2,146.96

Said last two payments were made to, and collected by, Richard Nickell, who was then the acting Collector of Internal Revenue for said First District of California, and which payments had been demanded by him.

XX.

The total amount so paid by plaintiff was \$35,-269.85, consisting of:

Tax (Title IX)	\$ 5,933.72	
Employer's tax (Title VIII).....	15,785.57	
Employer's tax (Title VIII) paid by plaintiff from its own funds and not repaid to it	6,195.77	
Penalties (under Title IX)	976.21	
Penalties (under Title VIII).....	4,019.84	
Interest (under Title IX).....	404.13	
Interest (under Title VIII).....	1,954.61	
	<hr/>	\$35,269.85
		[11]

XXI.

Said Clifford C. Anglim continued in office as such Collector of Internal Revenue to and including May 31, 1942, since which date he has not been, and is not now, in office as such Collector. From July 1, 1942, to December 31, 1942, Richard Nickell was the acting Collector of Internal Revenue for said First District of California, since which date he has not been, and is not now, in office as such acting Collector or as Collector.

XXII.

On August 3, 1943, plaintiff filed with the Collector of Internal Revenue for the First District of California its twelve verified claims for the refund of all of the taxes, penalties and interest so paid by

it. A separated itemized claim was filed for the tax, penalty and interest so paid under said Title IX for each of the six calendar years 1936 and 1941, both inclusive, and a separate itemized claim was filed, for the tax, penalty and interest so paid under said Title VIII, for each of the six calendar years 1937-1942, both inclusive. Said claims were on printed Form No. 843 prescribed and provided therefor by the Treasury Department of the United States for claims for refund of taxes illegally collected. Each of said claims stated all the matters and things by said Form 843 required to be stated therein, viz: the district in which the returns for taxes were filed; the period for which the tax was paid; the character of the tax; the amount of the tax, and of the penalty and interest; the date of payment; the amounts to be refunded, (which corresponded to the amounts so paid by plaintiff), the time within which the claim could be legally filed expired, and, as the grounds therefor, the matters set forth in Exhibit "A" hereto attached, which is hereby [12] referred to and made a part of this complaint. In addition, each of the claims for the taxes so paid and which had allegedly accrued prior to April 1, 1939, and for the penalties and interest in respect thereof, set forth, as additional grounds therefor, that the same were retroactively and illegally assessed and collected and also the matters alleged in "Exhibit B" hereto annexed, which is hereby referred to and made a part of this complaint. Each of said claims was signed by plaintiff and verified by the oath of its president. On October 26, 1943, the

United States Commissioner of Internal Revenue officially notified plaintiff, in writing, that all of said claims were disallowed on the ground that plaintiff was "an organization organized exclusively for social welfare" and was not a "corporation organized and operated exclusively for charitable purposes."

Wherefore, plaintiff demands judgment against said defendant for the sum of \$35,269.85, with interest thereon and costs of suit.

P. A. BERGEROT

A. P. DESSOULAVY

Attorneys for plaintiff [13]

United States of America

State and Northern District of California—ss:

Emile J. Pierron, being first duly sworn, deposes and says:

That he is an officer, to-wit: President of La Societe Francaise De Bienfaisance Mutuelle, the plaintiff named in the foregoing complaint; that said plaintiff is a corporation, and that, for that reason and as such officer, affiant makes this affidavit on its behalf; that he has read said complaint and that he knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and that, as to such matters, he verily believes it to be true.

EMILE J. PIERRON

Subscribed and sworn to before me this 20 day of November, 1943

[Seal] FRED BROWN

Notary Public in and for the City and County of San Francisco, State and Northern District of California.

My Commission Expires August 27, 1947. [14]

EXHIBIT "A"

Said La Societe Francaise de Bienfaisance Mutuelle is now, and ever since its incorporation in 1856 has been, a corporation organized and operated exclusively for charitable, scientific and educational purposes, to-wit: the treatment of the sick without profit, no part of the net earnings of which enures, or ever has enured, to the benefit of any private shareholder or individuals.

Taxpayer was founded in San Francisco December 28, 1851, as an unincorporated charitable society to treat the sick, and on June 7, 1856 was incorporated under Chapter VIII of the California Corporation Act of 1850, "Relating to Religious and other associations and societies". Its only activity is, and always has been, the treatment of the sick without profit.

Taxpayer has never had any capital stock, and no interest, dividends or other pecuniary distributions, or sick or death benefits, have ever been paid to any one. Any net earnings have always been applied to the improvement of its services. Its affairs are managed by a board of fifteen directors

elected annually by the members, and who serve without any fees, salary or compensation whatever. At the time involved, it had, and still has, nearly ten thousand members. Its membership is unlimited, and it has always admitted new members.

Taxpayer was originally founded by donations, and its hospital and plant (on the block of land in San Francisco, California, bounded by Geary Boulevard, Fifth and Sixth Avenues and Anza Street) have mainly been acquired by testamentary and other gifts and the income therefrom. Taxpayer, though in part maintained by members' dues and admission fees, has set up a relief fund to pay the dues of needy widows and orphans and other needy members, for whom it cares without charge.

Taxpayer's only purpose is, and always has been, to treat the sick, and to treat an indefinite and unlimited number thereof, and to give to such persons as adequate and complete treatment as possible, and this not for profit but at the lowest possible charge, consistent with its continued solvency. In addition, taxpayer maintains at its hospital an Old Peoples' Home for elderly members who are admitted thereto, either without charge or on a nonprofit basis, and gives free emergency treatment (about three hundred cases per year) to deserving cases in its neighborhood and also gives other forms of gratuitous relief. It is a nonprofit agency of the Community Chest of San Francisco.

Taxpayer, accordingly, claims that, as a nonprofit hospital corporation, it is, and always has been, a charitable corporation within the meaning of Sections 1426(b)(8) and 1607(c)(7) of the Federal

Internal Revenue Code, and of the corresponding Sections of the Social Security Act.

On July 14, 1937, Charles T. Russell, as Deputy United States Commissioner of Internal Revenue, officially notified taxpayer, in writing, that it was "exempt from payment of the taxes imposed by the Social Security Act, approved August 14, 1935, inasmuch as you come within the exceptions provided in Section 811(b)(8) of Title VIII and Section 907(c)(7) of Title IX." [15]

EXHIBIT "B"

Thereafter, on April 3, 1939, by a written communication bearing said date, Victor A. Self, as acting Deputy Commissioner of Internal Revenue, officially notified taxpayer, in writing, that it "and its employees are liable for the taxes imposed by Title VIII of the Social Security Act," and, (as was the fact), if taxpayer was an employer of eight or more individuals, "it was also liable for the tax imposed by Title IX thereof."

Following its receipt of said communication of July 14, 1937, taxpayer had refunded to its employees the amounts theretofore deducted from their wages, pursuant to said Title VIII, and thereafter and until the receipt of said communication of April 3, 1939, discontinued any further deductions from their wages.

[Endorsed]: Filed Nov. 23, 1943. [16]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, United States of America, by its attorney, Frank J. Hennessy, United States Attorney for the Northern District of California, and answers the complaint herein as follows:

I. Admits that the plaintiff is a California corporation and that its principal place of business is in the city and county of San Francisco and in the Northern District of California, but denies the remaining allegations contained in paragraph I of the complaint.

II. The allegations contained in paragraph II of the complaint are denied.

III. The allegations contained in paragraph III of the complaint are denied for lack of sufficient knowledge and information.

IV. The allegations contained in paragraph IV of the complaint are denied for lack of sufficient knowledge and information.

V. The allegations contained in paragraph V of the complaint are denied for lack of sufficient knowledge and information. [17]

VI. The allegations contained in paragraph VI of the complaint are denied for lack of sufficient knowledge and information.

VII. The allegations contained in paragraph VII of the complaint are denied for lack of sufficient knowledge and information.

VIII. The allegations contained in paragraph

VIII of the complaint are denied for lack of sufficient knowledge and information.

IX. The allegations contained in paragraph IX of the complaint are denied for lack of sufficient knowledge and information.

X. The allegations contained in paragraph X of the complaint are denied.

XI. The allegations contained in paragraph XI of the complaint are denied for lack of sufficient knowledge and information.

XII. The allegations contained in paragraph XII of the complaint are denied for lack of sufficient knowledge and information.

XIII. The allegations contained in paragraph XIII of the complaint are denied for lack of sufficient knowledge and information.

XIV. The allegations contained in paragraph XIV of the complaint are denied for lack of sufficient knowledge and information.

XV. The allegations contained in paragraph XV of the complaint are denied for lack of sufficient knowledge and information.

XVI. Admits that on July 14, 1937, Charles T. Russell as Deputy Commissioner notified plaintiff in writing that it was [18] exempt from payment of taxes imposed by the Social Security Act, Title VIII, and that it was entitled to exemption under the provisions of Section 101(6) of the Revenue Act of 1936, but denies the remaining allegations contained in paragraph XVI of the complaint.

XVII. The allegations contained in paragraph XVII of the complaint are admitted.

XVIII. The allegations contained in paragraph XVIII of the complaint are admitted.

XIX. Admits the allegations contained in lines 15 to 22, inclusive of paragraph XIX of the complaint.

(a) Admits that the taxes, penalty and interest under Title IX of the Social Security Act in the total sum of \$673.35 were paid for the calendar year 1936, but alleges the payment thereof was made on August 14, 1940, according to the records of the Collector of Internal Revenue.

For calendar year 1937:

Admits that tax, penalty and interest in the sum of \$1,319.46 were paid for 1937, but alleges that payment was made on August 14, 1940, according to the records of the Collector of Internal Revenue.

For calendar year 1938:

Admits that tax, penalty and interest in the sum of \$1,984.99 were paid, for 1938 but alleges that payment was made on August 14, 1940, according to the records of the Collector of Internal Revenue.

For calendar year 1939:

Admits that tax, penalty and interest in the sum of \$1,717.95 were paid for 1939, but alleges that payment was made on August 14, 1940, according to the records of the Collector of Internal Revenue.

[19]

For calendar year 1940:

Admits that tax in the sum of \$812.65 was paid for 1940, but alleges that payment was made on January 27, 1941.

For calendar year 1941:

Admits that tax in the sum of \$805.66 was paid

for 1941, but alleges that payment was made on January 31, 1942.

(b) Admits that tax, penalty and interest were assessed and collected under Title VIII of the Social Security Act as follows:

For calendar year 1937:

Admits that tax, penalty and interest in the sum of \$7,527.81 were paid for 1937, but alleges that payment was made on November 4, 1940, according to the records of the Collector of Internal Revenue. For lack of sufficient knowledge and information it is denied that plaintiff paid any part of this sum from its own funds.

For calendar year 1938:

It is admitted that at least \$7,853.10 was paid, but alleges that according to the records of the Collector of Internal Revenue such payment was made August 14, 1940. For lack of sufficient knowledge and information it is denied that any part of this sum was paid by plaintiff from its own funds.

For calendar year 1939:

Admits that taxes at least in the sum of \$5,091.08 were paid, but denies the correctness of the allegations contained in the complaint as to the date of such payments and further denies for lack of sufficient knowledge and information that any portion of the sums paid represented sums paid by plaintiff from its own funds. [20]

For calendar year 1940:

Denies that payments in excess of \$691.93 were made for the first quarter and alleges that such payments were made on August 14, 1940, according to the records of the Collector of Internal Revenue.

For the second quarter of 1940 it is admitted that \$683.50 was paid as tax, together with interest of \$3.42 thereon, but alleges that such payments according to the records of the Collector were made on August 14, 1940, and September 5, 1940, respectively.

It is admitted that tax in the sum of \$664.62 was paid, but alleges that according to the records of the Collector such sum was paid on October 21, 1940. It is also admitted that tax in the sum of \$583.24 was paid, but alleges that according to the Collector's records such sum was paid January 27, 1941.

For calendar year 1941:

It is admitted that a total of \$2,685.52 was paid in taxes for this year, but it is denied that payments were made on the dates alleged, according to the records of the Collector of Internal Revenue.

For calendar year 1942:

It is admitted that the plaintiff paid at least \$2,146.96 in taxes for 1942, but it is denied that the payments were made on the dates alleged in the complaint, but it is admitted that they were collected by Richard Nickell, who was then acting Collector of Internal Revenue for the First District of California.

XX. Denies that the total amount of taxes, interest and penalty claimed to have been paid under paragraph XIX above amounts to \$35,269.85 as alleged in paragraph XX of the complaint. [21]

XXI. Admits the allegations contained in paragraph XXI of the complaint, except that it is alleged that Richard Nickell became acting Col-

lector on June 1, 1942, and not July 1, 1942, as alleged in the complaint.

XXII. Admits the allegations contained in this paragraph as alleged in lines 24 to 30, inclusive, on page 12 and lines 1 to 6, inclusive, on page 13 of the complaint, but denies the remaining allegations contained in said paragraph.

Wherefore defendant demands judgment against the plaintiff dismissing the complaint, together with costs and disbursements of this action.

FRANK J. HENNESSY

United States Attorney.

[Endorsed]: Filed Mar. 31, 1944. [22]

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday the 27th day of June, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable A. F. St. Sure, District Judge.

[Title of Cause.]

TRIAL—MOTION FOR JUDGMENT FOR THE PLAINTIFF

DENIED—MOTION FOR JUDGMENT FOR THE DEFENDANT

DENIED—ORDERED BRIEFS FILED AND CASE SUBMITTED

This case came on regularly this day for trial before the Court sitting without a jury, neither party having demanded a trial by jury. A. P. Dessouslavy, Esq., was present for the plaintiff, and Miss Esther B. Phillips was present for the defendant. Mr. Dessouslavy and Miss Phillips made opening statements to the Court on behalf of the respective parties. Edward Pomme and P. A. Bergerot were sworn and testified on behalf of the plaintiff. Mr. Dessouslavy introduced in evidence and filed Plaintiff's Exhibits Nos. 1 to 14, inclusive. Miss Phillips stated to the Court that the defendant would offer no evidence, whereupon the evidence was closed. Mr. Dessouslavy made a *motion* for judgment for the plaintiff, which motion was denied. Miss Phillips made a motion for judgment for the defendant, which also was denied. It is Ordered that briefs be filed herein in 10, 10 and 10 days, the case then to be submitted. [23]

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday the 3rd day of October, in the year of our Lord one thousand nine hundred and forty-four.

[Title of Cause.]

Present: The Honorable A. F. St. Sure, District Judge.

JUDGMENT FOR PLAINTIFF

This case heretofore having been heard and submitted and being now fully considered and the Court having filed its written opinion thereon, it is Ordered, in accordance with said opinion, that plaintiff have judgment with costs as prayed for in accordance with an order this day signed and filed. [24]

[Title of District Court and Cause.]

ORDER FOR JUDGMENT

Ordered: Plaintiff may have judgment as prayed for, with costs. Counsel for plaintiff may submit findings of fact and conclusions of law.

Opinion filed.

Dated: October 3, 1944.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Filed Oct. 3, 1944. [25]

[Title of District Court and Cause.]

OPINION

St. Sure, District Judge:

Upon proper claim for refund plaintiff sues to recover \$35,269.85 paid by it for taxes, interest and penalties assessed by defendant under Titles VIII and IX [26] of the Social Security Act (approved August 14, 1935, 49 Stat. 620). The question for decision is whether the fact that plaintiff, a non-profit hospital, has paying members who receive medical, hospital, and other benefits from their membership, subjects plaintiff to Social Security taxes.

Plaintiff claims exemption from payment of the taxes as a charitable organization under Internal Revenue Code § § 1426(b)(8), relating to the old age pension, and 1607(c)(8), relating to unemployment insurance, each of which provides that "the term 'employment' does not include: * * * Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Plaintiff society was founded in San Francisco in 1851 to treat the destitute sick. In 1856 it was incorporated under Chapter VIII of the California Corporation Act of 1850 "Relating to Religious and other Associations or Societies", (California Stats. 1850, p. 373), and has continued its corporate exist-

ence thereunder. It operates a large general hospital known as the French Hospital which is open to the public, a home for elderly members to which they are admitted without charge or on a non-profit basis, and a nurses' training school accommodating 75 nurses. It also trains about six interns a year.

Plaintiff has no capital stock or shareholders. It has never paid dividends, interest, or sickness or death [27] benefits. Defendant admits that plaintiff, under its bylaws, cannot pay a dividend out of its net earnings to anyone. Its directors and officers serve gratuitously. Since its inception plaintiff has received donations and bequests amounting to more than \$360,000, and has received other substantial public support by way of subscriptions and loans. Any surplus from its operations is invested in the hospital plant or held in reserve for that purpose.

Plaintiff's income is derived in part from dues paid by members of its society. Requirements for membership (apart from health or age) are that applicant be of French birth or descent, or the member of the immediate family of a qualified member, or that he speak French. The last requirement is broadly construed. Plaintiff's membership is open, and it has about 9700 members. Monthly dues range from \$1.00 a month for children to \$1.75 for adults. Life memberships are sold for \$1500. Members are entitled to receive medical and hospital care gratuitously in some instances and at a small charge in others. A fund has been established for the aid of destitute members.

Plaintiff maintains two free beds for non-mem-

bers who are unable to pay for hospitalization, and gives free emergency treatment to personal injury cases arising in its neighborhood.

While there was no testimony produced at the trial with regard to taxes paid by San Francisco hospitals other than plaintiff, it is admitted by defendant that with the exception of plaintiff and several strictly proprietary [28] hospitals, the San Francisco hospitals do not pay social security taxes to the United States; that while some of the hospitals which are not taxed are exempt under other provisions of the Act, such as those operated by churches or religious groups ("religious * * * purposes"), or in connection with and as an integral part of a medical school ("educational purposes"), or by a political subdivision of the state (Section 1607(c)(6)), there are in fact five large hospitals open to the public, organized on a non-profit basis, which have none of the above exemptions and are not taxed.

Defendant states that the distinction between plaintiff and four of those hospitals is that plaintiff is composed of a society of members who own and operate the French Hospital "for mutual benefit", a factor which is probably not present in the other hospitals. As to the fifth hospital, it appears from plaintiff's reply brief that it is operated by a closed membership. Defendant states "We are not sufficiently informed as to the differences between that hospital and plaintiff to be able to distinguish them." The record is silent in this regard.

Plaintiff has all the attributes of a non-profit hospital, unless its character as such is changed by

its membership plan. If so, it would follow that if other non-profit hospitals, not now subject to tax, should in the future adopt such a progressive and salutary plan, they would be penalized by the levy of social security taxes.

In 1937 the Deputy Commissioner of Internal Revenue notified plaintiff that it was exempt from payment of social security taxes. However in 1939 this ruling was [29] reversed by the Acting Deputy Commissioner. The reason for the change does not appear.

As plaintiff states, the hospital cannot rely exclusively on irregular charitable donations. The periodical contributions of its members enable it to continue and expand its beneficial activities. The members receive in exchange a form of insurance against the large expense of serious illness. Depending on the state of his health, the individual member may never receive any benefit from his dues, other than a sense of security, or he may receive benefits in excess of the amount of money he has paid in. The members have no interest in the hospital plant and other assets of the society other than the right to use its facilities.

As authority that the fact that the individual members benefit by their membership does not prevent the hospital from being a charitable institution, plaintiff cites *U. S. v. Proprietors of Social Law Library*, 102 F. (2d) 481. The facilities of the library were open to citizens of Boston who were willing to aid in its upkeep by becoming "proprietors" or "subscribers". Certain Federal officers were entitled to free use of the library. No part

of the earnings of the corporation were paid to any shareholder, but were used to improve the facilities of the library. The Government attempted to impose a capital stock tax on the corporation, claiming that the net earnings inured to the benefit of the shareholders or individuals because any improvements rendering the library more serviceable to [30] its members were of special benefit to them. The court said, "but though every improvement in a charitable institution confers additional benefits on those using it, or availing themselves of its benefits, such benefits have never been considered as taking the institution out of the class of charitable institutions because it has enabled it to do better educational, literary or charitable work, or because it resulted in distributing its benefits among private shareholders or individuals."

Following the same reasoning, the fact that the members benefit from the use of the hospital should not alter its character as a non-profit hospital. The members pay for the service they receive. The public, of course, pays higher rates for hospitalization than the members, for it has not contributed monthly payments to the hospital. But there is no showing that the members receive less costly treatment at the expense of the public, or that the amount of dues charged is not commensurate with the cost of treating the membership as a whole. The proof shows that in the eighty-seven years of its history, plaintiff has occasionally made a profit, has sometimes come out even, and has more often sustained a deficit. When profits are made or charitable do-

nations received, both the membership and the public benefit by the improvements in hospital facilities made possible thereby.

In *La Societe Francaise v. California Employment Commission*, 56 C.A. (2d) 534, the California District Court of Appeals decided that this plaintiff was liable for state social security taxes. The court said it was unable to [31] agree with appellant (plaintiff here) as to the view, purpose and intent of Congress that hospitals not operated for profit are charitable institutions. In support of its reasoning it cited the case of *Hassett v. Associated Hospital Service Corporation*, 125 F (2d) 611. This case is discussed in defendant's brief in the case at bar. However, as counsel for defendant comments, the *Associated Hospital Service Corporation* did not own or operate a hospital, nor did it receive charitable donations. It contracted for medical and hospital care for its members in a number of hospitals. The Circuit Court of Appeals held that such an association is not a charitable organization and is liable for social security taxes. It discussed the *Social Law Library* case, *supra*, saying: "That case is distinguishable from the case at bar. While the facts in both cases are nearly the same, we feel that the plaintiff corporation is more akin to a business organization than the one involved in the *Social Law Library* case. There the corporate capital was composed in good part of charitable gifts, the payment of a fee was not prerequisite to the receipt of benefits in every case and the fee did not bear an exact relation to the cost of the benefit conferred."

Plaintiff has all the attributes of the Social Law Library which are mentioned as points of distinction between the Library case and the Hassett case. Charitable gifts compose a substantial portion of its capital; the payment of a fee is not prerequisite to the receipt of benefits in every case, for as above stated, the hospital gives free emergency treatment, maintains two free beds for non-members, and provides certain benefits for indigent [32] members; the fee does not bear an exact relation to the cost of the benefits conferred, for being supported in part by charity, the hospital is enabled to maintain a better plant and render greater service to its members and the public than if it were wholly supported by private capital. Also, plaintiff's activities in training nurses and interns render it, at least in part, an educational institution.

Defendant cites *In re Farmers' Union Hospital Ass'n of Elk City (Wash.)*, 126 P. (2d) 244, in support of its argument that a hospital operated for the benefit of its membership is not operated for a charitable purpose. In that case the hospital generally made an annual profit which was used to increase its facilities and reduce the cost of service to its members for the following year. The court also found that no conscious effort was made to bestow charitable benefits upon any person not connected with the organization. Neither of these facts appear in the present case.

The provisions of the Social Security Act exempting charitable organizations should be liberally

construed. *Hassett v. Associated Hospital Service Corporation*, 125 F. (2d) 611; *U. S. v. Proprietors of Social Law Library*, 102 F. (2d) 481. Non-profit hospitals have frequently been held, for purposes of taxation, to be charitable institutions, although they receive paying patients, so long as a portion of their work is charitable. *Commissioner of Internal Revenue v. Battlecreek Inc.*, 126 F. (2d) 405; *In re Mendelsohn*, 31 N.Y.S. (2d) 435; *In re Rust's Estate*, 12 Pac. (2d) 396; *New England Sanitarium v. Inhabitants of Stoneham*, 91 N.E. 385; *State v. H. Longstreet Taylor Foundation*, 269 N.W. 469; [33] *Virginia Mason Hospital Ass'n v. Larson*, 114 Pac. (2d) 976. In *Butterworth v. Keeler* (N.Y.) 114 N.E. 803, Mr. Justice Cardozo said that non-profit "universities and hospitals are unquestionably public charities"; and in *Slee v. Commissioner*, 42 F. (2d) 184, Judge Learned Hand observed that the object to maintain health without profit "has been a recognized kind of charity from time immemorial."

The Attorney General of the United States on November 2, 1943, advised the President that the Social Security Act is not applicable to non-profit hospitals. He based his conclusion on the fact that non-profit hospitals have been uniformly exempted from the provisions of the income tax law under an identical exemption clause (Section 101(6) of the Internal Revenue Act of 1936); and that when formulating the Social Security Act Congress showed its intent in this regard by refusing an amendment specifically exempting hospitals as sur-

plusage because of the uniform construction of identical language by the Bureau of Internal Revenue as exempting non-profit hospitals, "and also on the fear that the insertion of the words added by the Senate amendment might interfere with the continuation of the long-continued construction of the income-tax law." H. Rept. 1540, 74th Cong., 1st Session, p. 7. Opinions of Attorneys General, Vol. 40, Op. No. 72.

An organization such as plaintiff's is of great public benefit. It enables a person of limited means, through the payment of small monthly sums, to receive medical care without resorting to public charity. The need for such [34] protection has long been recognized, and there has been agitation for compulsory insurance of this type. A non-profit hospital which has no stock and pays no dividends renders a public service, and I think Congress has clearly shown its intent to exclude such hospitals from the provisions of the Act.

Plaintiff may have judgment as prayed for.

* * * * *

October 3, 1944.

[Endorsed]: Filed Oct. 3, 1944. [35]

[Title of District Court and Cause.]

FINDINGS

The above entitled action was tried to the court June 27, 1944, Messrs. P. A. Bergerot and A. P.

Dessouslavy appearing as counsel for plaintiff, and Frank J. Hennessy, United States Attorney, and Esther B. Phillips, Assistant United States Attorney, appearing as counsel for defendant;

Evidence, oral and documentary, was thereupon introduced, and the court being fully advised in the premises, now finds the following to be the facts:

1. Plaintiff is now, and ever since June 7, 1856, has been, a corporation incorporated pursuant to and in accordance with Chapter VIII (relating to "Religious and other Associations or [36] Societies") of the California Corporation Act of 1850. Its residence, office and principal place of business at all times have been in the City and County of San Francisco, State and Northern District of California. It was incorporated as the successor of, to take charge of the estate and property belonging to, and to transact all affairs relative to the temporalities of, an unincorporated beneficial society of the same name founded in San Francisco December 28, 1851, for the purpose of caring for and treating the sick without profit.

2. Plaintiff's sole purpose ever since its incorporation has been, and now is, the care and treatment of the sick without profit. To that end it has always maintained, and now maintains, a nonprofit hospital.

3. Plaintiff has not now, and has never had, any capital stock. No dividends, interest, sick or death benefits, or other pecuniary benefits or distributions are now, or have ever been, paid to any one. No part of its net earnings enures, or ever has enured,

to the benefit of any private shareholder or individual.

4. At the time of the commencement of this action, and for many years prior thereto, and prior to August 14, 1935, plaintiff's affairs have been managed by a board of fifteen directors, elected annually by the members, and who serve without any fee, salary, or other compensation whatever.

5. Plaintiff has been able to acquire and enlarge its present hospital plant and facilities mainly through testamentary and other gifts and the income therefrom. Receipts from members would not have been sufficient therefor. The assets acquired by plaintiff in 1856 from its predecessor had largely consisted of charitable gifts and donations. Since 1851, gifts, legacies and devises [37] have aggregated more than Three Hundred and Sixty Thousand (360,000.00) dollars. In the absence thereof, plaintiff could not have acquired, improved or enlarged its present plant nor afford the facilities which it now furnishes. On February 29, 1944, the date of the close of plaintiff's last fiscal year, there was carried on its books a reserve amounting to Two hundred and twenty-one thousand six hundred and twenty-seven and 76/100 (221,627.76) dollars, of which Seventy-six thousand seven hundred and eighty-three and 87/100 (76,783.87) dollars was made up of such gifts, and the balance, viz: One hundred and forty-four thousand eight hundred and thirty-six and 89/100 (144,836.89) dollars, represented its Depreciation Fund. By plaintiff's By-Laws, such reserve is set aside for the improvement, enlargement, and betterment of its plant and facili-

ties. Said Chapter VIII of said Corporation Act of 1850 authorizes plaintiff to take and hold property, real and personal, by gift or devise, and to take, hold and improve real and personal property and to erect hospitals and other buildings.

6. Prior to 1895, plaintiff owned and operated a general hospital in said City and County of San Francisco. In and after 1894 it erected, and has since owned and operated, a general hospital (now comprising eleven buildings) on its block of land in San Francisco bounded by Geary Boulevard, Anza Street and Fifth and Sixth Avenues. It has a capacity of 225 beds, (seventy-six in private rooms and one hundred forty-nine in wards), and a nursery with fifteen cribs, and is open to the public at large without distinction as to race, creed or color. Said hospital was at the time of the commencement of this action, and long prior thereto, had been, approved by American Medical Association and American College of Surgeons as a "Class A" Hospital. At and [38] ever since the commencement of this action, and long prior thereto, the equipment, services and facilities of said hospital were adapted and available for the treatment of every kind of human sickness. In plaintiff's fiscal year ending February 28, 1944, the average daily number of hospitalized patients was 189.71, and the number of patient-days, viz: the total number of days' treatment given to all hospitalized patients, was 69,437. In plaintiff's eight fiscal years ending February 29, 1944, the average daily number of hospitalized patients was 171.40 and the average annual number of

patient days in said period was 64,222. In said fiscal year ending February 29, 1944, there were 26,329 consultations by members at, or calls on members by the medical staff outside, the hospital. In its last eight fiscal years ending February 29, 1944, the same annually averaged 26,987.

7. Plaintiff maintains, in connection with said hospital, and ever since 1895, has maintained, at about an average annual cost of about \$12,000, a Training School for nurses for the care of the sick, injured and infirm. It was the first such school organized on the Pacific Coast. It is approved and accredited by the Board of Nurse Examiners of the State of California. There is now, and ever since 1923 has been, situate on said block of land a large four story and basement brick building built and used exclusively as a training home for nurses and devoted wholly to their education, training, lodging and maintenance, where they take a three-year course in connection with the hospital. In addition, in the main hospital building, there are two fully equipped class rooms for said student nurses and a dietetic school room. There are usually sixty to seventy student nurses enrolled and following the course of study. [39]

8. Said hospital is accredited by American Medical Association for the training of interns, and, as such, a scientific and teaching institution for future physicians. There are usually not less than six interns in said hospital, each of whom is a graduate of an accredited Medical School and takes, at said Hospital, a one-year course in order to obtain

a wide field of experience, and where they are directed and trained under the supervision of the medical staff.

9. Plaintiff, in said hospital, also maintains, from current income, an Old People's Home for the care of aged and feeble members, with a capacity of fifteen beds at all times fully occupied. To said Home there are admitted, for benevolent purposes only, and subject to the discretion of the Board of Directors, (a) members over sixty-five years of age, who pay for their admission thereto a sum of money determined by said Board according to the circumstances of each case, but which sum is not based upon any fixed schedule of rates or upon any profit-making basis, but upon the applicant's needs and ability (if any) to pay and upon social and humane considerations and is not designed to yield a profit, and (b) members who have been such for at least thirty consecutive years and who are past sixty-five years of age and who, though not ill, are unable, on account of old age or physical disability, to earn a living, no charge being made for their admission.

10. Plaintiff affords other charitable relief. (a) It provides, at its hospital, two permanent free beds for the treatment of indigent persons under the patronage of La Societe de Secours des Dames Francaises, (French Ladies Relief Society), an independent charitable corporation in San Fran- [40] cisco. (b) It is situated on one of the main traffic thoroughfares of San Francisco, and gives free

emergency treatment if necessary, (an average of about 300 annually), to all deserving cases in its neighborhood.

11. The number of plaintiff's members is now, and always has been, without limit. It has always admitted, and now admits, new members. At the time of the commencement of this action its membership was about 9,700 and at the dates of the various payments hereinafter referred to, its membership averaged about 9,800. It does not solicit, and never has solicited, new members, and has never paid any commission or compensation to any one to obtain new members. It has only one class of members, who pay monthly dues of \$1.75, except (a) life members who pay upon their admission, but whose rights are otherwise the same, and (b) children under fifteen years, one of whose parents is a member, pay one dollar per month.

12. Continued payment of members' dues is not, however, necessarily a condition to relief. In the case of indigent member-widows, and of other needy members, such dues, at the discretion of the Board of Directors, are paid from plaintiff's relief fund originally set up in 1905 for that purpose, and since added to. In the Board's discretion, other indigent members are cared for in illness without charge, and without limit of time, and are furnished private rooms and other needed facilities. A member under seventeen years of age, if orphaned or abandoned by his parents, pays no dues, nor do members in the armed forces of the United States nor student nurses who are members.

13. At the time of the commencement of this action, plaintiff's members were entitled to the following benefits, either [41] without any charge or at a discount from prevailing prices, viz:

1. Medical and surgical care and consultations are given, without charge, to plaintiff's members by staff of physicians specially appointed therefor, who give consultations either at, or outside of, said hospital;

2. Hospitalization is given, without charge, including operating room service, drugs, dressings, Board and Room, up to and not to exceed six months in any one year, (but in tuberculosis cases the time of hospitalization is unlimited), except for a charge of fifty cents per day when hospitalized in a ward, and of about fifty per cent of prevailing prices when hospitalized in private room;

3. Special discounts (from ten to ninety per cent of prevailing prices) on drugs and dressings, and on all X-Ray examinations and treatments, on Diathermy, Hydrotherapy, Physiotherapy treatments, Metabolism examinations, electrocardiograms, and in obstetrical cases.

These, if not more, were the benefits to which they were entitled at the various times since August 14, 1935.

14. The annual expense of the operation and maintenance of the hospital, including the cost of medical, surgical and clinical services to hospitalized and nonhospitalized members, general administrative expense, and the periodical modernization and improvement thereof and of its equipment, is

derived from (1) members' monthly dues; (2) admission fees of new members of \$25 and upwards, according to age; (3) income from plaintiff's securities and other investments; (4) donations, legacies and bequests, (5) life membership fees; (6) special admission fees from life boarders; and (7) receipts from non-member hospitalized patients. [42]

15. Whenever, in any year, the funds so received have been in excess of the amount of such expenses, such excess has been credited to a surplus accumulated in furtherance of the accomplishment of the plaintiff's non-profit purpose. The net deficiency, if any, in any year has been paid out of such surplus.

16. Ever since January 1, 1936, and for many years continuously prior thereto, there has been no change in plaintiff's said plan and method of operating said hospital. On July 14, 1937, Charles T. Russell, as Deputy United States Commissioner of Internal Revenue, officially notified plaintiff, in writing, that it was "exempt from payment of the taxes imposed by the Social Security Act, approved August 14, 1935, inasmuch as you come within the exceptions provided in Section 811(b)(8) of Title VIII and Section 907 (c) (7) of Title IX", and, further, that it was "entitled to exemption under the provisions of Section 101 (6) of the Revenue Act of 1936."

17. On February 24, 1939, the then acting United States Commissioner of Internal Revenue officially notified plaintiff, in writing, that "it appears you

are not operated for profit and do engage in substantial charitable activities”, but that it was not entitled to exemption from income tax under the provision of Section 101 (6) of the Revenue Act of 1938 as a corporation organized and operated exclusively for charitable purposes, and that “the ruling contained in Bureau letter of July 14, 1937 is modified accordingly.” Said communication further stated that “the status of your organization for Social Security Tax purposes will be made the subject of a separate communication”. Thereafter, on April 3, 1939, Victor H. Self, as the acting Deputy Commissioner of Internal Revenue, officially notified plaintiff, [43] in writing, referring to said communication of February 24, 1939, and stating that plaintiff was not entitled to exemption under Sections 811(b)(8) of Title VIII, and Section 907(c)(7) of Title IX, of said Social Security Act.

18. Afater the receipt of said communication of July 14, 1937, plaintiff refunded to its employees all the contributions which it had theretofore deducted from their wages pursuant to said Act, and thereafter discontinued such deductions until said communication of April 3, 1939. The taxes payable pursuant to said Act for the period between January 1, 1937, and March 31, 1939, including the tax upon employees’ wages, with the penalties and interest thereon, were paid by plaintiff entirely from its own funds, and no part of such payments represents amounts ever deducted or withheld from the wages of income of any employees or ever repaid by and employee in whole or in part.

19. Except only as to the name of the person by whom the same were collected, plaintiff, on the respective dates hereinafter set forth, paid to, and there was collected by, Clifford C. Anglim, as Collector of Internal Revenue for the First District of California, the following amounts for taxes assessed upon it in alleged conformity with said Social Security Act, with interest thereon and the penalties in respect thereof, payment of all whereof had been demanded of it by said Collector;

(a) Taxes assessed and collected allegedly pursuant to Title IX of the Social Security Act, (Sections 1600 and following of Internal Revenue Code), with penalties and interest thereon:

For calendar year 1936:

Tax	\$462.12	
Penalty	115.53	
Interest	95.70	
		\$673.35

Said payments were all made Aug. 14, 1940. [44]

For calendar year 1937:

Tax	\$944.36	
Penalty	236.09	
Interest	139.01	
		\$1,319.46

Said payments were all made August 14, 1940.

For calendar year 1938:

Tax (in part)	\$1,484.32	
Penalty	371.09	
Interest	129.58	
		\$1,984.99

Said payments were all made August 14, 1940.

For calendar year 1939:

Tax (in part)	\$1,424.61	
Penalty	253.50	
Interest	39.84	
		\$1,717.95

Said payments were all made August 14, 1940.

For calendar year 1940:

Tax—\$812.65 paid January 20, 1941.

For calendar year 1941:

Tax—\$805.66 paid January 31, 1942:

(b) Taxes, penalty and interest assessed and collected allegedly pursuant to Title VIII of the Social Security Act, (Sections 1400 and following of Internal Revenue Code).

For calendar year 1937:

Tax	\$5,229.96	
Penalty	1,307.49	
Interest	990.36	
		\$7,527.81

Said payments were all made October 30, 1940. Of said sum of \$5,229.96, one half, or \$2,614.98 represented employees' contributions paid by plaintiff from its own funds. [45]

For calendar year 1938:

Tax	\$5,750.92	
Penalty	1,437.74	
Interest	664.44	
		\$7,853.10

Said payments were all made August 14, 1940. Of said sum of \$5,750.92, one half, or \$2,875.46, represented employees' contributions paid by plaintiff from its own funds.

For calendar year 1939:

Tax	\$ 17.59	paid July 19, 1939
Tax	21.95	paid Oct. 23, 1939
Tax	19.65	paid Jan. 23, 1940
Tax	3,500.11	
Penalty	1,262.31	
Interest	279.47	
	<hr/>	\$5,091.08

Said last three amounts were paid August 14, 1940. Of said sum of \$3,500.11, \$705.33 represented employees' contributions paid by plaintiff from its own funds.

For calendar year 1940:

Tax (first quarter)	\$677.32	
Penalty	12.30	
Interest	16.92	
	<hr/>	\$706.54

Said sums were paid August 14, 1940.

Tax (second quarter)	\$683.50	paid Aug. 14, 1940
Interest thereon	3.42	paid Sept. 10, 1940
	<hr/>	\$686.92

Tax.....	\$664.62	paid October 21, 1940
Tax.....	583.24	paid January 20, 1941

For calendar year 1941:

Tax.....	\$ 670.34	paid April 19, 1941
Tax.....	673.47	paid July 9, 1941
Tax.....	661.21	paid Oct. 17, 1941
Tax.....	680.50	paid Jan. 16, 1942
	<hr/>	\$2,685.52

[46]

For calendar year 1942:

Tax.....	\$ 710.76	paid April 20, 1942
Tax.....	716.40	paid July 20, 1942
Tax.....	719.80	paid October 13, 1942
	<hr/>	\$2,146.96

Said last two payments were made to, and collected by, Richard Nickell, who was then the acting Collector of Internal Revenue for said First District of California, and which payments had been demanded by him.

20. The total amount so paid by plaintiff was \$35,269.85, consisting of:

Tax (Title IX)	\$ 3,933.72	
Employer's tax, (Title VIII).....	15,785.57	
Employees' tax, (Title VIII) paid by plaintiff from its own funds and not repaid to it	6,195.77	
Penalties (under Title IX).....	976.21	
Penalties (under Title VIII).....	4,019.84	
Interest (under Title IX).....	404.13	
Interest (under Title VIII).....	1,954.61	
	<hr/>	\$35,269.85

21. Said Clifford C. Anglim continued in office as such Collector of Internal Revenue to and including May 31, 1942, since which date he has not been, and is not now, in office as such Collector. From June 1, 1942, to December 31, 1942, Richard Nickell was the acting Collector of Internal Revenue for said First District of California, since which date he has not been, and is not now, in office as such acting Collector or as Collector.

22. On August 3, 1943, plaintiff filed with the Collector of Internal Revenue for the First District of California its twelve verified claims for the refund of all of the taxes, penalties and [47] interest so, as aforesaid, paid by it. A separate itemized claim was filed for the tax, penalty and interest so paid under said Title IX for each of the six calen-

dar years 1936 to 1941, both inclusive, and a separate itemized claim was filed, for the tax, penalty and interest so paid under said Title VIII, for each of the six calendar years 1937-1942, both inclusive. Said claims were on printed Form No. 843 prescribed and provided therefor by the Treasury Department of the United States for claims for refund of taxes illegally collected. Each of said claims stated all the matters and things by said Form 843 required to be stated therein, viz: the district in which the returns for taxes were filed; the period for which the tax was paid; the character of the tax; the amount of the tax, and of the penalty and interest; the date of payment; the amounts to be refunded, (which corresponded to the amounts to be paid by plaintiff), the time within which the claim could be legally filed expired, and, as the grounds therefor, the following matters, to wit:

“Said *La Societe Francaise de Bienfaisance Mutuelle* is now, and ever since its incorporation in 1856 has been, a corporation organized and operated exclusively for charitable, scientific and educational purposes, to-wit: the treatment of the sick without profit, no part of the net earnings of which enures, or ever has enured, to the benefit of any private shareholder or individuals.

Taxpayer was founded in San Francisco December 28, 1851, as an unincorporated charitable society to treat the sick, and on June 7, 1856 was incorporated under Chapter VIII of the California Corporation Act of 1850, “Relating to Religious and other associations and societies.” Its only ac-

tivity is, and always has been, the treatment of the sick without profit.

Taxpayer has never had any capital stock, and no interest, dividends or other pecuniary distributions, or sick or death benefits, have ever been paid to any one. Any net earnings have always been applied to the improvement of its services. Its affairs are managed by a board of fifteen directors elected annually by the members, and who serve without any fees, salary or compensation whatever. At the time involved, it had, and still has, nearly ten thousand members. Its membership is unlimited, and it has always admitted new members. [48]

Taxpayer was originally founded by donations, and its hospital and plant (on the block of land in San Francisco, California, bounded by Geary Boulevard, Fifth and Sixth Avenues and Anza Street) have mainly been acquired by testamentary and other gifts and the income therefrom. Taxpayer, though in part maintained by members' dues and admission fees, has set up a relief fund to pay the dues of needy widows and orphans and other needy members, for whom it cares without charge.

Taxpayer's only purpose is, and always has been, to treat the sick, and to treat an indefinite and unlimited number thereof, and to give to such persons as adequate and complete treatment as possible, and this not for profit but at the lowest possible charge, consistent with its continued solvency. In addition, taxpayer maintains at its hospital an Old People's Home for elderly members who are admitted thereto, either without charge or on a

nonprofit basis, and gives free emergency treatment (about three hundred cases per year) to deserving cases in its neighborhood and also gives other forms of gratuitous relief. It is a nonprofit agency of the Community Chest of San Francisco.

Taxpayer, accordingly, claims that, as a nonprofit hospital corporation, it is, and always has been, a charitable corporation within the meaning of Sections 1426(b)(8) and 1607(c)(7) of the Federal Internal Revenue Code, and of the corresponding Sections of the Social Security Act.

On July 14, 1937, Charles T. Russell, as Deputy United States Commissioner of Internal Revenue, officially notified taxpayer, in writing, that it was "exempt from payment of the taxes imposed by the Social Security Act, approved August 14, 1935, inasmuch as you come within the exceptions provided in Section 811(b)(8) of Title VIII and Section 907(c)(7) of Title IX."

In addition, each of the claims for the taxes so paid and which had allegedly accrued prior to April 1, 1939, and for the penalties and interest in respect thereof, set forth, as additional grounds therefor, that the same were retroactively and illegally assessed and collected and also the following matters, to-wit:

"Thereafter, on April 3, 1939, by a written communication bearing said date, Victor A. Self, as acting Deputy Commissioner of Internal Revenue, officially notified taxpayer, in writing that it "and its employees are liable for the taxes imposed by Title VIII of the Social Security Act," and, (as

was the fact), if taxpayer was an employer of eight or more individuals, "it was also liable for the tax imposed by Title IX thereof."

Following its receipt of said communication of July 14, 1937, taxpayer had refunded to its employees the amounts theretofore deducted from their wages pursuant to said Title VIII, and thereafter and until the receipt of said communication of April 3, 1939, discontinued any further deductions from their wages." [49]

Each of said claims was signed by plaintiff and verified by the oath of its president. On October 26, 1943, the United States Commissioner of Internal Revenue officially notified plaintiff, in writing, that all of said claims were disallowed on the ground that plaintiff was "an organization organized exclusively for social welfare" and was not a "corporation organized and operated exclusively for charitable purposes."

As a conclusion of law, the court finds:

(a) That plaintiff is now, and ever since August 14, 1935, has been, a charitable corporation within the meaning of Section 811 (b) (8) of Title VIII and of Section 907(c) (7) of Title IX of the Social Security Act approved August 14, 1935, and of the corresponding provisions of the Federal Internal Revenue Code;

(b) That plaintiff is entitled to judgment against defendant for the sum of \$35,269.85 with interest as provided by law at the rate of six per centum on the various portions thereof hereinafter set forth from the following dates, viz:

- On the sum of \$17.59 from July 19, 1939;
- On the sum of \$21.95 from October 23, 1939;
- On the sum of \$19.65 from January 19, 1940;
- On the sum of \$19,980.78 from August 14, 1940;
- On the sum of \$3.42 from September 10, 1940;
- On the sum of \$664.62 from October 21, 1940;
- On the sum of \$7,527.81 from October 30, 1940;
- On the sum of \$1,395.89 from January 20, 1941;
- On the sum of \$670.34 from April 19, 1941;
- On the sum of \$673.47 from July 19, 1941;
- On the sum of \$661.21 from October 17, 1941;
- On the sum of \$680.50 from January 16, 1942;
- On the sum of \$805.66 from January 31, 1942;
- On the sum of \$710.76 from April 20, 1942; [50]
- On the sum of \$716.40 from July 20, 1942;
- On the sum of \$719.80 from October 13, 1942;

(c) That plaintiff is entitled to judgment for its costs of suit.

Let judgment in accordance with the foregoing be entered herein.

A. F. ST. SURE

District Judge

(Acknowledgment of Receipt of Copy)

[Endorsed]: Filed Oct. 13, 1944. [51]

In the District Court of the United States for the
Northern District of California, Southern Di-
vision

No. 22,967 S

LA SOCIETE FRANCAISE DE
BIENFAISANCE MUTUELLE,
a corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

This cause having come on regularly for trial upon the 27th day of June, 1944, being a day in the March 1944 term of said court, before the court sitting without a jury, a trial by jury having been waived; Messrs. P. A. Bergerot and A. P. Dessouslavy appearing as attorneys for plaintiff, and Frank J. Hennessy, Esq., United States Attorney, and Miss Esther B. Phillips, Assistant United States Attorney, appearing as attorneys for defendant, and oral and documentary evidence having been introduced and closed, and the cause having been submitted to the court for consideration and decision, and the court, after due deliberation, having filed its opinion and ordered that judgment be entered in favor of plaintiff for Thirty-Five Thousand Two Hundred and Sixty-Nine and 85/100 (35,269.85) dollars with interest, at the rate of six per

centum per annum as provided by law and as hereinafter [52] set forth, on the several portions of said amount, and for costs;

Now, Therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the court that La Societe Francaise de Bienfaisance Mutuelle, a corporation, plaintiff, to have and recover of and from United States of America, defendant, the sum of Thirty-Five Thousand Two Hundred and Sixty-Nine and 85/100 (35,269.85) dollars, with interest as provided by law at the rate of six per centum per annum on the various portions thereof hereinafter set forth from the following dates, viz:

- On the sum of \$17.59 from July 19, 1939;
- On the sum of \$21.95 from October 25, 1939;
- On the sum of \$19.65 from January 19, 1940;
- On the sum of \$19,980.78 from August 14, 1940;
- On the sum of \$3.42 from September 10, 1940;
- On the sum of \$664.62 from October 21, 1940;
- On the sum of \$7,527.81 from October 30, 1940;
- On the sum of \$1,395.89 from January 20, 1941;
- On the sum of \$670.34 from April 19, 1941;
- On the sum of \$673.47 from July 19, 1941;
- On the sum of \$661.21 from October 17, 1941;
- On the sum of \$680.50 from January 16, 1942;
- On the sum of \$805.66 from January 31, 1942;
- On the sum of \$710.76 from April 20, 1942;
- On the sum of \$716.40 from July 20, 1942;
- On the sum of \$719.80 from October 13, 1942;

such interest to be computed by the Commissioner of Internal Revenue, and as provided by law, and its costs herein expended taxed at the sum of \$

Judgment entered October 13, 1944.

C. W. CALBREATH

Clerk

[Endorsed]: Filed Oct. 13, 1944 [53]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Now comes the defendant, the United States of America, appearing by Frank J. Hennessy, United States Attorney for the Northern District of California, and hereby appeals from the judgment rendered in favor of the plaintiff in the above-entitled case to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: January 9th, 1945.

FRANK J. HENNESSY,

United States Attorney.

(Acknowledgement of Receipt of Service)

[Endorsed]: Filed Jan. 9, 1945. [54]

[Title of District Court and Cause.]

STIPULATION AND ORDER THEREON EXTENDING TIME FOR FILING RECORD ON APPEAL AND DOCKETING CAUSE IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT (RULE 73g).

It Is Hereby Stipulated that the time of the above named defendant for filing record on appeal and for docketing the above entitled action on appeal in the United States Circuit Court of Appeals for the Ninth Circuit, in pursuance of notice of appeal heretofore filed by said defendant, be extended to and including the 9th day of April, 1945.

Dated: February 9, 1945.

P. A. BERGEROT

A. P. DESSOUSLAVY

Attorneys for Plaintiff.

FRANK J. HENNESSY

United States Attorney,

Attorney for Defendant.

[55]

ORDER

On reading the foregoing Stipulation, and on application of Frank J. Hennessy, United States Attorney, attorney for the above named defendant, and good cause appearing therefor;

Now, therefore, It Is Ordered that the time of de-

defendant for filing record on appeal and for docketing the above entitled action on appeal in the United States Circuit Court of Appeals for the Ninth Circuit, in pursuance of notice of appeal heretofore filed by said defendant on January 9, 1945, be and the same is hereby extended to and including the 9th day of April, 1945.

Dated: February 10, 1945.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Filed Feb. 10, 1945. [56]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

To the Clerk of the above entitled Court, and to Messrs. P. A. Bergerot and A. P. Dessouslavy, attorneys for plaintiff:

The above named defendant, by its attorney herein, hereby designates for inclusion in the transcript of record upon appeal the complete record and all the proceedings and evidence in the action.

Filed herewith, in conformity with Rule 75(b) of the Federal Rules of Civil Procedure, are two copies of the reporter's transcript of the evidence and proceedings at the trial of said action.

Dated: February 28th, 1945.

FRANK J. HENNESSY,
United States Attorney,
Attorney for Defendant. [57]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

United States of America,
State and Northern District of California,
City and County of San Francisco—ss.

R. B. McMillan, being duly sworn, deposes and says:

That his business address is 422 United States Post Office and Courthouse Building, Seventh and Mission Streets, San Francisco, California; that he is a citizen of the United States, and a resident of the City and County of San Francisco; that he is over the age of 18 years, and not a party to the above entitled cause; that on the 28th day of February, 1945, he placed a copy of the within designation of Contents of Record on Appeal in an envelope addressed to Messrs. P. A. Bergerot and A. P. Desouslavy, Attorneys at Law, 110 Sutter Street, San Francisco, California, which is the office [58] address of the attorneys for the above named plaintiff, sealed said envelope, and deposited it in the United States mail at San Francisco, California, with the postage thereon fully prepaid; that there

is delivery service by United States mail at the place so addressed.

R. B. McMILLAN

Subscribed and sworn to before me this 28th day of February, 1945.

[Seal] WM. J. CROSBY

Deputy Clerk, U. S. District Court No. Dist. of California.

[Endorsed]: Filed Feb. 28, 1945. [59]

In the Southern Division of the United States District Court, in and for the Northern District of California

No. 22,967-S

LA SOCIETE FRANCAISE DE
BIENFAISANCE MUTUELLE,
a corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Tuesday, June 27, 1944

Before: Hon. A. F. St. Sure, Judge.

The Clerk: La Societe Francaise, etc., vs. United States.

Mr. Dessouslavy: Ready.

Miss Phillips: Ready.

Before going ahead with the testimony, I would like to state this: The answer admits, I believe, all of the amounts of payments as alleged in the complaint but differs as to the date of payment. I think that was because perhaps a check [60] would be drawn as of a certain date and then in the account of the bookkeeper there might be a delay in delivery or passing. I think it would simplify matters if I offered the plaintiff a stipulation that the taxes paid to the United States, which are referred to in the complaint, were all paid in the amounts alleged, and that the dates of payment as shown in the Collector's books is four days after the date alleged in the complaint.

Mr. Dessouslavy: In each instance?

Miss Phillips: In each instance. I think that would simplify matters rather than my going through and amending my answer. Is that satisfactory?

Mr. Dessouslavy: Yes, in each case each payment of taxes, principal and interest, alleged in the complaint is stipulated was made, and the only change is that the date of those payments is agreed to be four days later, in each instance, than the date specified in the complaint.

Miss Phillips: Yes. I think that would perhaps simplify it.

Then in paragraph 22 plaintiff alleges the filing of claims for refund and the rejection by the Commissioner. I would like to correct my answer in that. I believe that I can safely admit, and I will

admit, that plaintiff filed claims for refund in the form and in the amounts as required by law on October 26, 1943, the ground of disallowance apparently being that the plaintiff was not a corporation organized to [61] operate exclusively for charitable purposes, but was an organization organized exclusively for social welfare.

Mr. Dessouslavy: That would mean admitting the allegations of paragraph 22 of the complaint.

Miss Phillips: Practically all admitted. I do not know whether you have alleged anything else in that paragraph, but I am stipulating that plaintiff filed claims for refund in the form and amounts required by law, and that they were rejected on the ground alleged.

Mr. Dessouslavy: Very well. We will call our first witness, Mr. Pomme.

EDWARD B. POMME,

called as a witness by the plaintiff; sworn

The Clerk: Q. Will you state your name to the Court, please?

A. Edward B. Pomme.

Mr. Dessouslavy: Q. Where do you live, Mr. Pomme?

A. 642 Fifth Avenue, San Francisco.

Q. What is your occupation?

A. I am the bookkeeper of the La Societe Francaise De Bienfaisance Mutuelle.

Q. Are you also an accountant? A. Yes.

(Testimony of Edward B. Pomme.)

Q. Are you the accountant for the plaintiff, the French Hospital? A. Yes.

Q. How long have you held that position?

A. 27 years.

Q. Are all of the books and accounts of the plaintiff under [62] your direction and supervision? A. Yes.

Q. And have been for many years?

A. Yes.

Mr. Dessouslavy: There is not much controversy on the facts, and if there is no objection I will ask leading questions.

Miss Phillips: Yes, I think that is all right. If I find they are too leading then I will object.

Mr. Dessouslavy: Q. Does the plaintiff maintain and operate a hospital known as the French Hospital on the block of land bounded by Geary Boulevard, Anza Street, and Fifth and Sixth Avenues? A. Yes.

Q. That is a general hospital, is it not?

A. Yes.

Q. Open to the public at large? A. Yes.

Q. Does the hospital make any distinction as to race, color or creed in making application for treatment? A. No.

Q. Does it take smallpox cases? A. No.

Q. Or delirium tremens cases? A. No.

Q. Or insanity cases? A. No.

Q. With those exceptions does it treat all?

A. Yes.

(Testimony of Edward B. Pomme.)

Q. Is it and has it been for a long time approved by the American Medical Association? A. Yes.

Q. And also the American College of Surgeons?

A. Yes.

Q. It is approved by them as a class A hospital?

A. Yes.

Q. Has the hospital a number of departments?

A. Yes.

Q. Has it a maternity department?

A. Yes.

Q. A department of pathology? A. Yes.

[63]

Q. Equipped for all tests? A. Yes.

Q. Bacteriological? A. Yes.

Q. Chemical? A. Yes.

Q. Serological? A. Yes.

Q. Basal metabolism? A. Yes.

Q. Tissue examinations? A. Yes.

Q. Is there a department of radiology?

A. Yes.

Q. Is the hospital equipped for deep therapy procedures? A. Yes.

Q. There is a general executive staff at the hospital, is there not? A. Yes.

Q. That is, consulting staff, house staff, and visiting staff? A. Yes.

Q. How many doctors are there on the executive staff? A. Twenty-nine doctors.

Q. Who pays them? A. The society.

Q. The plaintiff? A. Yes.

(Testimony of Edward B. Pomme.)

Q. How many doctors on the consulting staff?

A. Four of them.

Q. They are not paid? A. No.

Q. How many doctors on the house staff?

A. Five doctors including internes who are paid.

Q. How many doctors on the visiting staff?

A. I think there are about 250 at the present time.

Q. The number of doctors on the house staff is rather depressed at the present time on account of the war, is it not? [64]

A. Yes.

Q. But normally and before the war how many resident doctors were there in the hospital?

A. There were seven resident internes and three resident doctors.

Q. So before that there were more on the house staff? A. Yes.

Q. When you speak of the visiting staff you simply mean doctors who attend patients in the hospital, is that so? A. Yes.

Q. Now, in what year was the hospital building on Geary street started, if you know?

A. 1895.

Q. How many buildings are there now on that block? A. There are eleven buildings.

Q. Are they one—or two stories?

A. Two stories.

Q. Are they interconnected to any extent?

A. Yes, nine of them are interconnected by hallways.

(Testimony of Edward B. Pomme.)

Q. Covered passages? A. Yes.

Q. That is the second floor?

A. The first and second floors.

Q. Are plaintiff's affairs managed by a board of directors? A. Yes.

Q. How many directors are there?

A. Fifteen.

Q. How often are they elected?

A. Twice a month.

Q. I mean how often is the board of directors elected?

A. They are elected once a year.

Q. The plaintiff carries on its business at the French Hospital there on Geary street, does it not?

A. Yes.

Q. It has no other office? A. No. [65]

Q. Now, will you briefly describe what plaintiff's activities are?

A. Well, the activities consist in taking care of the membership—taking care of the membership and operating a hospital.

Q. And furnishing medical and surgical service?

A. Yes.

Q. Does it also have a nurses' training school?

A. Yes. There is also an old people's home.

Q. On November 23, 1943, how many members did plaintiff have—in the month of November of last year.

A. Well, I am not sure about the figure, it must have been around 9500.

Q. About 9500? A. Yes.

(Testimony of Edward B. Pomme.)

Q. Does those figures that you have mentioned include life members? A. Yes.

Q. Are the rights of life members and other members the same?

A. They are exactly the same.

Q. What monthly dues do others than life members pay?

A. They pay \$1.75 a month, and that amount is reduced to \$1 for children under fifteen whose father or mother are members.

Q. How long has the \$1.75 per month been in effect? A. Since 1938.

Q. Before 1938 how much were they?

A. \$1.50.

Q. Before they were \$1.50 how much were they?

A. \$1.25.

Q. And before that at one time the rates were \$1 a month? A. Yes.

Q. For an adult member? A. Yes. [66]

Q. Is it because of increasing costs that you have had to increase the membership dues?

A. Yes.

Q. Now, how much do the minors pay?

A. The minors under fifteen pay \$1 a month.

Q. How long has the rate for the minors been \$1 a month? A. Since 1938 also.

Q. Before that how much?

A. It was 75 cents.

Q. And before that was it 50 cents?

A. 50 cents.

Q. Do you remember when it was they changed from 50 cents to 75 cents for minors?

(Testimony of Edward B. Pomme.)

A. I do not remember the exact date.

Q. Has the plaintiff ever had any capital stock?

A. No.

Q. Has it any shareholders? A. No.

Q. Has plaintiff ever paid any dividends to its members, cash or otherwise? A. No.

Q. Has it paid any interest? A. No.

Q. Has it paid any benefits in money?

A. No.

Q. Has it ever paid them any dividend or benefit in money? A. No.

Q. The plaintiff has a president, two vice-presidents, and two secretaries, has it not?

A. That is correct.

Q. Do any of them receive any compensation or salary? A. No compensation, whatsoever.

Q. Has any of them ever received any compensation or salary? A. Never

Q. Does the board of directors receive any compensation? A. No. [67]

Q. How many times a month do the directors meet?

A. Twice a month, on the 2nd and 4th Monday of every month.

Q. How many beds are there in the plaintiff's French Hospital? A. 225.

Q. How many private rooms?

A. I am not sure about the number.

Q. Well, approximately, would it be about 75?

A. About 75.

Q. The rest are in wards? A. Yes.

(Testimony of Edward B. Pomme.)

Q. Will you explain at length, Mr. Pomme, the benefits to which members are entitled to receive without any charge?

A. Well, they are entitled to consultation from the doctors of the society, and they are entitled to free consultation by the doctors who are on the staff of the society.

Q. That consultation is either at the hospital or a doctor's office? A. Yes.

Q. Or else the doctors calls at the member's home? A. Yes.

Q. His consultation is free at the hospital, at the office of the staff doctor, or at the member's home? A. Yes.

Q. That is the out patient's benefit?

A. Yes.

Q. Now, how many doctors are available at the hospital for the purpose of consultation?

A. Well, 25.

Q. Any one of those doctors can be consulted by a member? A. Yes.

Q. Are there any in Oakland?

A. Two doctors in Oakland.

Q. And in San Jose?

A. There is none at the present time.

Q. Are there some visiting doctors that members can call upon? [68] A. Yes.

Q. If a member falls sick and requires hospitalization all of this service is rendered without any charge at all? A. Yes.

(Testimony of Edward B. Pomme.)

Q. In the case of a man falling sick and requiring medical and surgical treatment at the hospital, what does he get without pay?

A. Well, he gets free medicine, free operating room service, and laboratory tests.

Q. He gets the operation, too, doesn't he?

A. The operation.

Q. He gets his drugs and dressings during the hospitalization period without charge?

A. Yes.

Q. Do the members hospitalized in the wards pay any charge? A. Yes, they do.

Q. How much?

A. That is 10 per cent of the price charged to outside patients.

Q. Is it not a fact that members in wards pay 50 cents per day?

A. That is about 10 per cent of the price charged to outside patients.

Q. But there is a flat charge of 50 cents a day?

A. Yes.

Q. A member who takes a private room, what does he pay a day?

A. About 50 per cent of that paid by outside patients.

Q. Is there a minimum daily charge for a private room for members? A. \$2 a day.

Q. Now, a memembr who is hospitalized can remain in the hospital and receive this free treatment for how long? A. For six months. [69]

(Testimony of Edward B. Pomme.)

Q. Does that mean six months in any one year?

A. In any one year.

Q. For example, if a member patient came to the hospital on July 1, he stays there until December 31, paying nothing, doesn't he? A. Yes.

Q. And then from January 1 to June 30 he would pay the ordinary rate? A. I think so.

Q. He would pay somewhat in addition. I think that is in the bylaws, I will get that. But commencing again on the 1st of July of next year he could come in the hospital free for another six months, can he not? A. Yes.

Q. Now, in the case of tuberculosis, is there any six months limitation?

A. There is no time limit in those cases.

Q. A tuberculosis case can stay for months or years without any payment? A. Yes.

Q. I think you have stated that during the period of hospitalization the members pay nothing for drugs and dressings? A. No, they do not.

Q. Is there any exception about that with regard to very special drugs for hospitalized patients?

A. No, except for outside patients, I mean outside members who use the pharmacy, they have to pay a certain price for prescriptions.

Q. It is also true, is it not, that in the case of members who are sick and in need, indigent members, they are retained in the hospital indefinitely and without regard to the six [70] months limitation? A. In some cases.

(Testimony of Edward B. Pomme.)

Q. That is in the discretion of the board of directors, is it not? A. Yes.

Q. Are there any services or medicines furnished to members at a discount?

A. Maternity service is given to mothers at a discount.

Q. When the mother is a member she gets a discount from the prevailing rates of charge?

A. Well, I am not familiar with that. I know there is a certain discount.

Q. I believe it is 25 per cent. Will you accept that, Miss Phillips?

Miss Phillips: Yes, a discount of 25 per cent to the member mothers.

Mr. Dessouslavy: Q. Do out patients, as you have described them a moment ago, pay any fee for drugs? A. Yes.

Q. How is that computed?

A. Well, there is a fee on drugs and dressings of 10 cents or 20 cents, regardless of cost.

Q. In the case of such matters as diathermy, hydrotherapy, physiotherapy, metabolism examinations, electrocardiograms, is there any discount?

A. There is a charge to the members of 50 cents for each.

Q. I have here a statement, Mr. Pomme, headed, "Daily average number of hospitalized patients," and "Annual calls and consultations in outpatient department," and I will ask you to look at that and tell me if that is correct.

A. Yes, it is correct. [71]

(Testimony of Edward B. Pomme.)

Mr. Dessouslavy: I offer this in evidence, if your Honor please, as Plaintiff's Exhibit No. 1.

Miss Phillips: No objection.

The Court: It may be marked.

(The document was marked "Plaintiff's Exhibit 1" in evidence.)

The Court: Are you going to read that into the record?

Mr. Dessouslavy: I do not think it is necessary.

The Court: I think it might as well be read into the record.

Mr. Dessouslavy: This is a statement for the eight fiscal years of the plaintiff commencing March 1, 1936, and it shows for the year ending February 28, 1937 a daily average of 183.63 patients, and then reading in chronological order, 1938, 187.10; 1939, 177.97; 1940, 174.31; 1941, 158.98; 1942, 162.08; 1943, 137.45; and 1944, 189.71. That is the daily average number of hospitalized patients.

The annual calls and consultations in outpatient department for the year ending February 28, 1937 was 35,502; 1938, 33,792; 1939, 33,299; 1940, 38,933; 1941, 35,933; 1942, 36,608; 1943, 29,481; and 1944, 26,329.

Q. Does the plaintiff, in its hospital, maintain what is called an old people's home? A. Yes.

Q. That is for the care of aged and infirm members? A. Yes.

Q. Is there a separate building for them?

A. Yes. [72]

(Testimony of Edward B. Pomme.)

Q. With accommodations for how many people?

A. Fifteen people.

Q. Is that building pretty well full?

A. It is always full.

Q. Do you also keep some old members at the main hospital buildings? A. Yes.

Q. About how many of those old members are there, altogether?

A. There are fourteen at the present time, as regular old people, I mean old people, and there are about 12 to 15 old people that are sick and stay in the hospital just because they are allowed to stay there.

Q. Are you usually present at meetings of the board of directors? A. Yes.

Q. Have you at times listened to their discussion when some member's application as a life boarder was received. A. Yes.

Q. In some cases under the bylaws the board of directors permits that? A. Yes.

Q. In those discussions, has the admission of those applicants been based upon a monetary or financial consideration, or upon general human considerations?

A. Just on human considerations.

Q. I mean those elderly people, when their applications were granted, were not taken on some other basis? A. No, they were not.

Q. You are quite sure of that?

A. Yes, absolutely.

(Testimony of Edward B. Pomme.)

Q. Just to make the thing clear, these old members are referred to as life boarders? A. Yes.

Q. When you say life boarders, you do not mean life members, do [73] you, who pay their fees in advance? A. No.

The Court: What does a life membership cost?

Mr. Dissouslavy: It has varied. It originally was \$100 for many years, and has increased to \$1500.

The Court: How many life members are there now?

A. 919, the last count.

Mr. Dissouslavy: Q. If a member is in the arme forces of the United States he pays no dues?

A. No.

Q. Dues are waived for members of the armed forces? A. Yes.

Q. If a minor under 17 loses his parents the dues are waived until he is 17? A. Yes.

Q. A student nurse who is a member pays no dues? A. No, he does not pay any dues.

Q. There is a society in San Francisco known as the French Ladies Benevolent Society?

A. Yes.

Q. And the hospital places free beds at the disposition of that French society? A. Yes.

Q. Those two free beds are also entitled to free medical service and medicines?

A. That is right.

Q. Geary Boulevard is a main traffic artery; automobiles pass the hospital on Geary Boulevard?

(Testimony of Edward B. Pomme.)

A. Yes.

Q. Does the hospital give free emergency treatment to deserving cases in that neighborhood?

A. Yes.

Q. It makes no charge for that?

A. It makes no charge.

Q. About how many such cases would there be in the court of a [17] month? A. About 18.

Q. Does the hospital repatriate poor members to the country of their origin? A. Yes.

Q. If an indigent member dies at the hospital the hospital pays for his funeral, doesn't it?

A. Yes.

Q. Does the hospital maintain a relief fund?

A. Yes.

Q. About how much money is there in that fund?

A. About \$12,000 at the present time.

Q. What is the fund used for?

A. To pay the dues of indigent members and members who can't afford to pay monthly dues, and also to cover some bills that they have made at the hospital that they are unable to pay.

Q. Suppose an indigent person needed a private room, for example, would he get that private room out of that fund? A. Yes, in some cases.

Q. That is in deserving cases? A. Yes.

Q. When was that relief fund first set up, do you know? A. In 1905.

Q. And out of that fund dues of orphans and poor widows are paid? A. Yes.

(Testimony of Edward B. Pomme.)

Q. In other words, a needy member is not turned away because he cannot pay his dues?

A. He is never turned away.

Q. That is a very definite fact? A. Yes.

Q. If he is a member and in need he is cared for?

A. Yes.

Q. Before this war about how many nurses would there usually be in the nurses training school?

A. There were about 75. [75]

Q. Taking a course of training? A. Yes.

Q. Is there a building especially devoted to them? A. Yes.

Q. That is on the corner of Anza and Sixth Avenue? A. Yes.

Q. A four-story and basement building?

A. Yes.

Q. That is entirely for their housing accommodations, is it not? A. Yes.

Q. Now, in a year when the receipts are more than the disbursements, what is done with the excess? A. Well, it is put aside as a reserve.

Q. I show you a statement, Mr. Pomme, marked, "Surplus account." Is that a correct statement of the surplus account of plaintiff on March 1, 1936 to February 29, 1944? A. Yes, it is.

Mr. Dessouslavy: We offer this in evidence as our next exhibit in order.

The Court: Admitted.

(The document showing surplus account was marked Plaintiff's Exhibit 2.)

Mr. Dessouslavy: If I may read it, your Honor,

(Testimony of Edward B. Pomme.)

it shows briefly this, that the surplus on March 1, 1936, was roughly \$123,000. There was a net adjustment of reserve for life members of \$13,000, making a total of \$136,325. From that total there is to be deducted an excess on disbursements over receipts for this period of \$35,283, a net write-off in value of securities of \$27,805; members old accounts charged off, \$2344; miscellaneous adjustments, \$249, with the result that the [76] surplus on February 29, 1944, was \$70,642.70, or a decrease in surplus during that eight-year period of \$65,682.95.

Q. Mr. Pomme, what is the source of plaintiff's receipts?

A. The sources of receipts are monthly dues, admission fees, and the profits out of the hospital's operations.

Q. I am talking about gross receipts. How about membership dues? A. Yes.

Q. Life membership fees. A. Yes.

Q. How about special admission fees of life boarders. A. Yes.

Q. How about income from investments.

A. Yes.

Q. How about also donations and legacies.

A. Yes.

Q. And there are also receipts from non-member patients, are there not? A. Yes.

Q. Since 1851, 92 years ago, when the hospital was founded, the hospital from time to time has received gifts, donations, and bequests, has it not?

A. Yes.

(Testimony of Edward B. Pomme.)

Q. Have you compiled from the books a list of those donations and bequests? A. Yes.

Q. And that has been carried up to a few weeks ago? A. Yes, \$362,000.

Mr. Dessouslavy: We offer in evidence as our exhibit next in order the paper entitled, "Donations and Bequests received from 1851 to 1940," and shows the donations and bequests received during that period of \$362,822.63.

The Court: It may be admitted. [77]

(The document was marked Plaintiff's Exhibit 3 in evidence.)

Mr. Dessouslavy: Q. Now, that statement is exclusive of such items as surgical instruments, books, and items of personal property? A. Yes.

Q. It does not include those? A. No.

Q. The nurses home is a building size 54 feet by 103 feet, is it not? A. Yes.

Q. Four-story and basement building?

A. Yes.

Q. With 80 rooms? A. 80 rooms.

Q. It has a library and laundry, reception room, and social hall, is that correct? A. Yes.

Q. That home is used solely for nurses, is it not?

A. Yes.

Q. There is also a nurses' dietary school, is there not? A. Yes. [78]

Q. I will come back to that later. I will show a paper, Mr. Pomme, headed "Improvements to Buildings and Equipment." You are familiar with that statement? A. Yes.

Q. And it is correct? A. Yes, sir.

(Testimony of Edward B. Pomme.)

Q. It covers eight years commencing March 1, 1936? A. Yes.

Q. It has three columns; the first is headed "Permanent Improvements (Capitalized)"; the second is headed "Semi-Permanent Improvements (Not capitalized)," and the third is headed "Current Maintenance." What do you mean by "Permanent Improvements"?

A. Well, they are improvements whose cost is added to the value of the buildings or the value of the equipment.

Q. You simply mark up your assets by that amount? A. Yes.

Q. Your second account is headed "Semi-Permanent Improvements." What do those consist of?

A. They consist of some improvements whose life, I would say, is not such as to be taken as permanent Improvements (Capitalized)"; the second have.

Q. You mean they do not permanently increase the value of the buildings?

A. They do not; their life is too short.

Q. In addition to that you have here on this exhibit "Current Maintenance," which runs about \$5000 a year?

A. Yes, that is the cost of current maintenance.

Miss Phillips: What does the "current maintenance" mean?

The Witness: That is the expense that happens as we go along from year to year.

Miss Phillips: You mean repairs? [79]

(Testimony of Edward B. Pomme.)

The Witness: Minor repairs and things of that type.

Mr. Dessouslavy: Q. The permanent improvements, semi-permanent improvements, and current maintenance in that eight-year period total about \$125,000? A. Yes.

Mr. Dessouslavy: I offer that as our exhibit next in order.

The Court: Is that the total of the three items you mentioned?

Mr. Dessouslavy: Yes.

The Court: That will be the total of the three items?

Mr. Dessouslavy: Yes.

The Court: It may be admitted.

(The paper was marked Plaintiff's Exhibit 4 in evidence.)

Mr. Dessouslavy: Q. Mr. Pomme, have you a statement there—this is not directly pertinent; you can object if you want to—in the seven fiscal years before March 1, 1936, do you know how much you spent for permanent improvements at the hospital?

A. I have not got the statement with me.

Q. If I showed you the figures would you recognize them? A. I think so.

Mr. Dessouslavy: Have you any objection?

Miss Phillips: No objection.

Mr. Dessouslavy: Q. Do you recognize these figures? A. Yes.

Q. I will ask you the question, In the seven fiscal

(Testimony of Edward B. Pomme.)

years before March 1, 1936 how much did you pay out for permanent improvements? [80]

A. Well, I don't remember the amount.

The Court: If it shows, read it.

Mr. Dessouslavy: \$62,395.59.

Q. That is about right? A. Yes.

Q. Is there any reserve carried for buildings?

A. Well, there is no reserve in the sense of building reserve, but there are some funds set aside for that purpose.

Q. I show you, Mr. Pomme, Plaintiff's Annual Report for the fiscal year ending February 29, 1944, page 9. There is the building reserve there, isn't there? A. Yes.

Q. That building reserve is made up of two items, one the benefactors' fund and the other name is what? A. Depreciation fund.

Q. How much was there in the depreciation fund on February 29 of this year?

A. There was \$144,836.89.

Q. How much was there in the benefactors' fund? A. \$76,783.87.

Q. The benefactors' fund is made up of gifts and donations? A. Yes.

Q. The depreciation fund is made up of charges against and deductions from the value of the buildings and a corresponding credit to the depreciation fund, is it not? A. Yes.

Q. Is that correct? Have I got that straight?

A. Yes.

(Testimony of Edward B. Pomme.)

Q. By the way, do you know what the hospital paid for its Geary Street block when it bought it about 1890? [81] A. \$47,000.

Q. It is now carried on the books at \$107,000?

A. Yes.

Q. For the record, that is just an estimate, is it not? A. Yes, I think so.

Q. The Bryant Street property was sold at a large profit in 1906, was it not?

A. It was sold for \$110,000.

Q. By the way, are there in the hospital any plates showing the names of donors? A. Yes.

Q. The bylaws provide, I believe, that all gifts and donations shall be reserved for permanent improvements? A. Yes.

Q. And not used to pay current expenses?

A. Yes.

Q. What has been the hospital's average income from interest, rents, and dividends in the past thirty years?

A. Well, around \$7,000—\$7,000 to \$10,000.

Q. What proportion of that would you say represented income from gifts and donations?

A. Practically all.

Q. This total of 225 beds, does that include those for internes, resident staff or employees?

A. No.

Q. Are the life boarders included among the 225?

A. Yes.

The Court: What is the income such as rent, dividends?

(Testimony of Edward B. Pomme.)

The Witness: From real estate.

Mr. Dessouslavy: From time to time the hospital has owned real estate. I think it has sold all of the real estate at this time. At this time they do not own any real estate other than the Geary Street property, do they? A. No. [82]

Q. But in the past the plaintiff did own property? A. Yes.

Q. It owned property on Jackson Street which it sold off? A. On Pine Street.

Q. That was sold? A. That was sold.

The Court: This is income from gifts?

Mr. Dessouslavy: That is securities from which the hospital received income, originating mostly in gifts.

The Court: At this time we will interrupt the trial for a few minutes.

(Recess.)

Mr. Dessouslavy: If your Honor please, at this time we offer in evidence the bylaws of the plaintiff as they were in 1931. There have been a number of amendments beginning with 1936, but I am offering the amendments since that date separately, and for convenience of reference I am offering a printed copy of the bylaws as they were in 1931.

Miss Phillips: No objection.

(The bylaws were marked Plaintiff's Exhibit 5 in evidence.)

(Testimony of Edward B. Pomme.)

PLAINTIFF'S EXHIBIT No. 5

Part 1

STATUTS

By-Laws

of

La Societe Francaise

de Bienfaisance

Mutuelle

(A Non-Profit Organization)

Owning and Operating

The

FRENCH HOSPITAL

(Conducted as a Non-Profit Institution)

Founded 1851

Incorporated 1856

San Francisco, California

As amended from time to time since incorporation and last amended by unanimous decision of the Board of Directors, March 31, 1941, upon recommendation by the Members of Annual Meeting, March 23, 1941, effective March 31, 1941.

Introduction

The French Mutual Benevolent Society was founded December 28, 1851 by a group of French emigrants to aid the needy and sick among the large group of French who had come to California

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

during the gold excitement and away from the troubled conditions in France. The French element was the most numerous among the population of San Francisco in the early fifties. On May 24, 1856 this Society was incorporated under the name of French Mutual Benevolent Society (*Societe Francaise de Bienfaisance Mutuelle*) with dues paying members but did not confine itself to its mutual name, but continued to exercise the charitable work for others than its members, as it had done in the past.

For years it has held two free beds open to non-members recommended by other benevolent institutions. A hospital was built on Bryant Street, San Francisco, in 1858 and a new hospital was built in 1894 in the entire block 240' by 600' bounded by Geary Boulevard (then Point Lobos Avenue), Anza Street, 5th and 6th Avenues, San Francisco.

This hospital was one of the first, if not the first, to institute a student body of nurses. Later a home for the student body was built on the north-east corner of Anza and 6th Avenue of 80 rooms, meeting hall and recreation rooms, with furnishings at a cost of \$120,000.00.

Instructors for the students are engaged at an approximate salary list of \$7,500.00. This is for graduate instructors, without taking into consideration lectures given by paid members of the Medical Staff.

Orphaned children of members up to 17 years of

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

age are furnished free medical treatment and hospitalization when needed.

The hospital has a body of seven interns finishing their education, receiving board, lodging and not less than \$25.00 of monthly expense money. Three resident house doctors are kept at the hospital.

During the fire and earthquake of 1906, the hospital took care of many refugees. During the world war, many of the soldiers stationed near First Avenue and Geary Boulevard were taken care of at the Hospital.

With its over 9,000 members, the Society has saved thousands of dollars to the City and County of San Francisco through its care of those requiring medical attention and unable to pay for regular hospital charges.

BY-LAWS

Of The French Mutual Benevolent Society

Article I.

§ 1. Through the act of incorporation dated May 24, 1856, the Society founded on December 28, 1851, thereafter exists under the name of: French Mutual Benevolent Society.

§ 2. The headquarters of the Society are located in the City of San Francisco, California.

§ 3. As far as practicable, the French language is used in members' meetings, at the Directors' meetings, as well as in the records of the Society.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

Article II.

Purpose of the Society.

§ 1. The Society is founded for the following purposes:

1. To provide medical assistance and hospitalization, in case of sickness or accident, preferably to people of French birth, or descendants of people of French birth, or persons speaking French.

2. To maintain and operate a Hospital, open to the public, and a clinic, thereby giving to the sick the benefit of up to date, modern, scientific care and to promote, as far as possible, for the benefit of Humanity, the study of sickness, of its treatment and of its prevention.

§ 2. It may maintain and operate a School of Nursing and an Old People's Home and engage within its available means in any other activity of a charitable, educational or scientific character.

§ 3. Neither political nor religious questions can ever be considered in its midst.

Article III

Means of Operation.

§ 1. The funds necessary to attain the purpose of the Society are acquired as follows:

1. By admission fees, monthly dues, life membership admissions of members.

2. By amounts paid by paying patients.

3. By miscellaneous incomes from the Hospital.

4. By revenues derived from investment of available funds.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

5. By donations legacies, endowments or subscriptions.

§ 2. The funds of the Society shall be used exclusively for the purpose specified in its By-Laws and no salary or bonus or compensation shall be paid to any member, as a member, or to any member of the Board of Directors, President, Secretary or any other officer of the Society. No profits, accumulations or surplus shall be distributed, or given as dividends, or enure to the benefit of any of the members of the Society or of any other private individual.

§ 3. When a person has been regularly admitted as a member, the amounts paid for his admission, his dues or his life membership become thereby the immediate and exclusive property of the Society to be used for its general humanitarian purposes, and the member relinquishes his rights to all or any part of said amounts.

Article IV

Admission of Members.

§ 1. Any person of French birth, or descendant of French or speaking French, sound in mind and in body, and less than 50 years old, can be admitted as a member of the Society.

All persons admitted as members must abide by the present By-Laws or any future amendments thereto.

§ 2. The age limit is retarded until 55 years of age for any person of French nationality who en-

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

rolls during the first year of his residence in California.

§ 3. The number of members is unlimited.

§ 4. To become a member, the applicant must present himself at the Hospital between the hours of 10 and 12 a. m., or 1 to 4 p. m., sign an application blank furnished by the office, and be examined by the Resident Physician or an Intern. If deemed necessary the application may be referred to a specialist of the Society. The application is then forwarded to the Committee for action thereon.

§ 5. The admission charges are as follows: Children under 15 years, \$25.00; applicants from 15 to 30 years, \$40.00. Applicants over 30 years old must pay an additional charge of \$3.00 per additional year; after the fortieth year, the extra charge is \$4.00 per year.

Admission fees are payable in advance and if the application is not accepted, they shall be refunded. However, upon demand and with the authorization of the Board of Directors, admission fees can be paid in three consecutive installments.

§ 6. Any person, of whatever nationality, may be elected honorary member of the Society, at a General Meeting, by a majority vote.

§ 7. Any person complying with the conditions required by the By-Laws to become a member, may, by paying a sum of \$1,500.00, become a life member, and thus acquire the full membership without ever having to pay monthly dues.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

§ 8. Any member having paid monthly dues at the rate of an adult during 15 consecutive years, may acquire the title of Life Member by paying the sum of \$1,000.00.

Article V

Dues.

§ 1. Dues are \$1.75 per month for any member past 15 years of age and for any child whose parents are not members. They are reduced to \$1.00 per month for children under 15 years whose father or mother is a member.

§ 2. These children, should they become orphans, or be abandoned by their parents, are exempt from the payment of any dues until the age of 17 years, and enjoy gratuitously the same privileges all other members do.

§ 3. Dues are payable from the first of the month of which a member is admitted, thereafter on the first of each month.

§ 4. The members residing in this City, pay their dues to the Collector or at the Hospital. Those residing in other localities may pay the corresponding member for their district. Payments may be made by money-order or by check.

Article VI

Privileges of Members.

§ 1. By the fact of his membership, a member is entitled gratuitously to all the services of the Society, subject however to all conditions, restrictions and exceptions prescribed in these By-Laws.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

§ 2. The members acquire their privileges three months after their first dues and lose them when allowing three months to elapse without paying any dues. They will reacquire their privileges 30 days after the payment of these arrears. The privileges can become operative before the three months lapse in case of a fracture or other unforeseen accident duly certified to by a doctor of the Society.

§ 3. Any member six months in arrears in the payment of his dues is hereby stricken from the rolls of the Society, and cannot be re-admitted except as a new member.

§ 4. Any member more than six months in arrears in the payment of his dues, who is over 50 years of age, and having been affiliated for 10 consecutive years, may obtain his former privileges by paying his arrearage, and presenting a health certificate duly signed by a doctor of the Society and consented to by the Board of Directors.

§ 5. Any member going to France for his service in the Army or joining the American Forces after having notified the Board of his departure may be reinstated at his return and will be released from the payment of arrears or of initiation fees, provided his request for reinstatement be filed during the six months following his discharge.

§ 6. Any member joining the Society's Training School for Nurses, shall be exempted from the payment of her dues during the period of her training.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

Article VII

General Meetings.

§ 1. The members entitled to vote meet at a General Preliminary Meeting the second Sunday in March of each year. They form a bureau composed of a President, a Vice-President and a Secretary.

§ 2. All propositions relating to the administration of the Society must be introduced at this meeting where they are discussed and voted upon. They are then studied by the Board, which has them published during the week preceding the General Meeting, rendering at the same time an opinion upon each one.

§ 3. The General Annual Meeting of the members takes place under the direction of the Board, the fourth Sunday in March of each year. The annual report is acted upon, as well as all the propositions introduced at the Preliminary Meeting.

§ 4. The Board has the right of calling a General Extraordinary Meeting to discuss a question of general interest, but it shall call one in the following case: Upon presentation of a request containing a specific reason, signed by at least seven per cent of voting members.

§ 5. The General Meetings can only be held on Sunday, and shall be called through due notice in the newspapers at least one week in advance. In case of an Extraordinary Meeting the notice shall contain the cause of the meeting. No question foreign to this cause can then be discussed.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

§ 6. The quorum required for a General Meeting shall consist of two hundred electors.

Article VIII

Elections.

§ 1. The elections for members of the Board of Directors of the Society take place on the Sunday following the General Annual Meeting.

§ 2. Members without distinction of sex, above the age of 15 years, are entitled to vote. They must have with them their membership card in good standing and an electoral card in order to vote.

§ 3. To be eligible as a director one must: First, be an elector, at least 21 years of age, without distinction as to sex; second, have been a member for at least one year; third, be French born or son of a Frenchman, or son of a Frenchman naturalized.

No member, directly or indirectly in the employ of a firm or company having commercial dealings with the Hospital, may be candidate to the Board of Directors. Any member of the Board who subsequently becomes involved directly or indirectly in a commercial transaction with the Hospital shall be thereby disqualified from office.

Exception shall be made in the case where some of the articles or services necessary to the Hospital cannot be obtained elsewhere or are needed in an emergency.

§ 4. All elections are by secret ballot and on a plurality of the votes. They are presided over by a

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

bureau composed of a president, a secretary, two judges of election and at least four tellers. This bureau may be nominated at the Preliminary Meeting, but in this case to be legally constituted it shall be ratified by the General Meeting.

§ 5. A candidacy to the office of Director must be presented by a member in good standing at the Preparatory Meeting or to the Board of Directors during the two weeks following. The Board must prepare a list of the candidates who meet the requirements prescribed by the By-Laws. The list closes at 5 p. m. on the Saturday preceding the General Meeting and shall be published from that day on in one or more French newspapers until the following Sunday, the day of the elections.

§ 6. The Board shall have printed two kinds of ballots, one on white paper and the other on colored paper. The white shall be placed at the disposal of the members three days before the elections; and the colored, stamped with the seal of the Society—the only ones to be used as ballots—shall be given out, upon presentation of a voting card, only on the election day, in the voting hall, where shall be arranged beforehand a special installation so that each voter may prepare his ballot in secret. The ballots shall contain the names of the candidates in alphabetical order and be similar to the official ballots used in the municipal elections of this City.

Each voter shall sign his name and address on a register appropriated in conformity with the uses

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

established for State and Municipal elections of the State of California.

No partial list of candidates, nor any electoral list different from those required by the By-Laws shall be introduced, distributed, exhibited or displayed in the Assembly or Voting Halls nor in the halls or vestibules communicating with the Assembly of Voting Hall.

Any member violating this regulation may be subject to ejection.

§ 7. After each name there is a square and the voter shall make a cross in the square placed on the right of the name of the candidate for whom he wishes to vote. Any irregular ballot—that is one containing more names voted than there are candidates to be elected—shall be declared, when the ballots are being counted, null and void for the part in which such irregularity appears.

§ 8. As soon as the results are determined the president of the elections shall announce them; they shall then be entered in the report which, after having been signed by the members of the buerau of elections, is given to the president of the Society who orders its publication.

§ 9. Any member who shall vote, or try to vote more than once at an election or in any secret vote, shall be expelled from the Society.

Any person voting under a name other than his own, shall be expelled from the Society, and if not a member shall at no time be admitted.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

Article IX

Administration.

§ 1. The Society is governed by a Board of Directors of 15 members elected in conformity with Art. VII.

§ 2. In the week following the elections, the outgoing Board shall install the new Board and transfer at this meeting all the documents and certificates of stock belonging to the Society entrusted in its care, the inventory of which shall be spread out on the minutes.

§ 3. The directors form their bureau by electing by an absolute majority, a president, two vice-presidents, a financial secretary and a recording secretary.

§ 4. The Board meets in regular meeting at least twice a month on such days as it determines.

§ 5. The President calls the Board in extraordinary meeting whenever he deems it necessary, or when a request for a call meeting is addressed to him by five Directors.

§ 6. The President, or one of the Vice-Presidents, or in their absence a member chosen by its colleagues present, presides over the meetings of the Board.

§ 7. The Board can hold a meeting only if eight members at least are present, and all motions shall be carried by a majority of those voting. The roll call on a motion takes place when it is requested by two members of the Board, and the vote of each

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

member present shall be recorded in the minutes; likewise a record shall be made of a member abstaining from the vote.

§ 8. After a motion has carried, any request for reconsideration of the vote shall be presented at the same meeting by one of the members having voted with the majority; but the reconsideration shall only take place at the following meeting.

§ 9. The minutes of each meeting shall be drawn up by the Secretary, approved by the Board and signed by the President and Secretary.

§ 10. The Board appoints all the employees of the Society, fixes their salaries and the amount of bonds for those who incur responsibilities such as the Superintendent, the Collector, the Accountant, etc. These bonds shall be provided by a society legally organized and acceptable to the Board.

§ 11. Any member of the Board absent from three successive meetings, who has not obtained a leave of absence, and was not excused on account of illness, is considered as having resigned.

§ 12. The Board fills all vacancies unless five or more should take place simultaneously. In this case the Board shall, before the expiration of ten days following the acknowledgement of said vacancies, call the members in conformity with Art. VI for an election.

§ 13. The Board shall annually submit the report of its administration at the Preliminary Meeting.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

§ 14. The Board shall, under no pretext whatsoever, make use of the credit, the name or the property of the Society for any operations outside of the interest of the Society.

§ 15. The Board has the right to elect as Honorary President of the French Mutual Benevolent Society an ex-President who has rendered valuable services to the Society, whenever such a step seems appropriate.

The Honorary President shall be named by a majority of the members of the Board for the time the latter stays in office. There should never be more than one Honorary President in the Society.

§ 16. Past Presidents of the Society have the right to be present at the meeting of the Board of Directors, and to take part in discussions. They have however no right to vote.

Article X

Funds.

§ 1. The receipts of the Society are composed of admission fees, monthly dues, income from investments, life members and life boarders admission fees and the income from the operation of the Hospital.

§ 2. The Society may in addition receive donations which will be used as much as possible to conform with the wishes of the donor. Unspecified donations however shall be deposited in a special fund to be called the Benefactors Fund of *La Societe Francaise de Bienfaisance Mutuelle*.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

§ 3. The amount determine by the Art. XV, §4 of the present By-Laws, and representing the depreciation on Buildings, Furniture and Equipment, shall be deposited in a special fund to be called the Depreciation Fund.

The Benefactors Fund and the Depreciation Fund shall constitute a general fund to be called the Rebuilding Fund, which will be reserved for future additions and improvements to the Hospital. The income from these funds shall revert to the current funds of the Society. The Rebuilding Fund can be used only upon a majority vote of two thirds of the members present at a General Meeting.

§ 4. The Board deposits the funds of the Society where they may draw interest, although reserving a sum sufficient to meet current expenses. The Board cannot settle, without a vote of the members, any question in which the interests of the Society might be engaged for a sum exceeding \$10 000.

§ 5. The name of any donor of a sum of \$100.00 or more together with the amount donated, shall be printed in the annual report and be read at each General Meeting.

Article XI.

Medical Service.

§ 1. Candidates for the position of Doctors for the Society must, when filing their applications, present at the same time their diplomas and their license from the State of California, and specify the

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

position for which they apply. A diploma is recognized by the Board only if granted by a college requiring a course of at least four consecutive years, and if it carries with it the right to practice in the Country or State where it was granted. The doctors having already served the Society are not subject to these conditions.

§ 2. The doctors are elected by the Board by secret ballot.

§ 3. The medical service is organized as follows:

First, salaried surgeons and salaried physicians making a tour of visits in the Hospital every morning and also receiving in consultation the city members. They shall also go to the Hospital each time they are called there for an urgent case.

Members shall have the right to select their doctor upon entering the Hospital.

Second, a resident physician at the Hospital.

Third, at least two internes.

Fourth, one or more physicians whose duty is to visit sick members, residents in the City and County of San Francisco.

Fifth, specialists whose services are defined by the Board.

§ 4 The doctors treating at the Hospital and the city physicians shall be in consultation at their offices two consecutive hours each day, excepting Sunday. Consultations shall be given the members

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

at the Hospital every Sunday, from 8 to 10 a. m., alternately, by one of the salaried physicians.

§ 5. Upon the request of a member, the city physician shall, but only in case of necessity, call in for consultation the physician treating at the Hospital. He shall, furthermore, be present at the operations performed at the Hospital each time he is requested to do so by one of the physicians treating at the Hospital, unless he himself is detained by an urgent case in his service.

§ 6. All the doctors are placed under immediate control of the Board. They shall conform, for their work, with the By-Laws of the Society as well as with the regulations established by the Board.

§ 7. Any doctor desirous of taking a leave of absence shall have to be authorized by the Board and supply a substitute who receives his salary and who shall first be accepted by the Board.

§ 8. All doctors licensed to practice medicine, including the Society doctors, excepting the resident physician, may send their own patients to the Hospital and take care of them there. These patients pay to the Society the prices paid by the paying patients.

§ 9. The regular doctors of the Society have not the right to interfere with the treatment of patients cared for by outside doctors without the consent of the latter.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

Article XII

Treatment of Members.

§ 1. Each member shall present his pass book to the doctor he consults. The sick members are entitled to visits at their residence from any of the Society's visiting physicians if they reside within the boundaries set forth in paragraph 4, Art. X, and if their illness prevents them from going to the physician's office. They are entitled to treatment in the Hospital, but they can only remain there if they follow a regular treatment.

The stay of a Member at the Hospital is limited to 6 months for each period of 12 months except for members affected with tuberculosis. After that time the member shall pay a minimum price of \$2.00 per day over the actual rates then in effect, without prejudice to his rights, to medical care, drugs and other treatments. The cases of indigent Members shall be referred to the Board of Directors who may draw from the Special Relief Fund the sum necessary to their hospitalization.

They are also entitled to consult there the doctors at their regular consulting hours, as well as to go to the offices of the doctors in charge of this service for consultation.

§ 2. The members being treated at the Hospital occupy the wards, but they can receive medical attention in private rooms by paying no less than one dollar and one half per day.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

§ 3. All prescriptions delivered to non-hospitalized members by the doctors of the Society or by other doctors, shall be filled at the Hospital or at any other pharmacy appointed by the Society, against the payment of 10 cents for every article comprised in the prescription.

Drugs that are not approved by the U. S. Board of Pharmacopea or the National Formulary shall be charged at cost.

§ 4. All radiological examinations and treatments shall be charged at the rate of 10% of the regular price, the minimum price being 50 cents and the maximum price being \$2.50 for each item.

Diathermy, Hydrotherapy and Physiotherapy treatments, Basal Metabolism examinations and electrocardiograms shall be charge at the rate of 50 cents each, and Pathological examinations at the maximum rate of 25 cents each.

§ 5. Upon written request by a physician of the Hospital a member residing within the boundaries of the City of San Francisco is entitled to the use of an ambulance by communicating with the Hospital.

In urgent and needy cases, members may be brought to the Hospital at the expense of the Society.

§ 6. Admission to the Hospital shall be refused to any member suffering from Insanity, Delirium Tremens, Small Pox or any other disease which, according to City Regulations should be treated in Special Hospitals. If such a disease develops after

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

admission, doctors in charge shall hold a consultation with a specialist and take the necessary steps to transfer the patient to the proper County or State Institution. Transportation expense shall be paid by the Society.

In the above cases the Society shall not be held responsible for any accident that may occur during the course of treatment.

§ 7. Any member under the influence of intoxicating liquor and whose condition would militate against the welfare of other patients, must not be treated at the Hospital unless confined to a private room or under the care of Private Nurses.

§ 8. Any member whose injury or illness has been caused by some act or condition in the jurisdiction of the California State Workmen's Compensation Act, shall be treated at the expense of his employer and of the Insurance Company representing the employer. The Hospital reserves its rights to forward the Hospitalization bill to the Insurance Company covering the employee.

§ 9. In cases of accident where a third party is found to be responsible, and where damages are recoverable by the victim, the member shall be bound to protect the interests of the Society and to include the hospitalization costs in the action brought against the party responsible and to reimburse the Society of any expense incurred by reason of said action.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

Article XIII

Patients Non-Members.

§ 1. The Society admits in the Hospital patients who are non-members, treated at the minimum price of three dollars (\$3.00) per day in the wards, and five dollars (\$5.00) and up per day in private rooms. The price of the board and extra room for the nurses is specified in the regulations of the administration.

Article XIV

Special Admission.

§ 1. The right to hospitalization for invalid members does not exist.

§ 2. The Board, for benevolent purposes, may admit, provisionally, at the expense of the Society, a member not ill, who is at least 65 years of age and a member of the Society for thirty consecutive years, without means of existence, or incapacitated through age or infirmity from earning his livelihood. The manner in which the members admitted under these conditions shall be housed and kept is determined by the Board, which may impose upon them certain work they must accept, under penalty of expulsion.

§ 3. The Board may admit as life pensioners, and after payment of a sum determined by the Board, members past 65 years of age having belonged to the Society for at least twenty consecutive years. These admissions shall be ratified by the members at a general meeting.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

If the approval is refused, the Board deducts from the sum deposited an amount equal to no less than \$2.00 per day, representing the cost of maintaining of the member during his stay at the Hospital. The days during which he was sick are not included in this account.

§ 4. To operate a saving for the Society as well as to grant more comforts to certain members, the Board may send to France, or another country, at the expense of the Society, the incurables who file a request and sign a declaration of renunciation to all their rights. The request shall, in all cases, be accompanied with a certificate from two doctors of the Society stating the character of the patient's illness.

Article XV

Penalties.

§ 1. The Board shall expel any member convicted of being ill at the time of his first application; of having made a false statement concerning his age, or for not having conformed with all the conditions required by the member who feigns illness or who, by any means whatsoever, prolongs the illness he is afflicted with.

§ 2. Any member who lends his pass book to a person non-member for aiding in perpetrating a fraud, or who would cause damaging prejudice to the interests or the good reputation of the Society or would bring an unjust judiciary action against the Society, shall be punished by expulsion.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

§ 3. The members expelled in accordance with this article or any article of these By-Laws, in any case whatever, are not entitled to any reimbursement of the sums they paid into the Society for admission or dues. Cases of expulsion shall be ratified by the General Meeting.

§ 4. Any member who has incurred a bill for treatment as the Hospital for the use of a private room or any other service, shall lose his rights until his bill is duly paid.

Bills shall become delinquent 90 days after his discharge from the Hospital. No money shall be credited to his membership account before complete payment of his obligation.

§ 5. Employees of La Societe Francaise de Bienfaisance Mutuelle are forbidden under penalty of expulsion from engaging in electoral campaigning.

§ 6. Employees are forbidden under penalty of dismissal to be purveyors to the Hospital or to be directly or indirectly connected with a firm having business relations with the Society.

Article XVI

Miscellaneous.

§ 1. An attorney, a notary or minister of a religious cult shall be called immediately to the Hospital at the request of a patient.

§ 2. At the death of a member, either at the hospital or at home, when the body is not claimed by

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

relatives or friends, the Society takes charge of the funeral, but the expenses thereof are charged to the member's estate.

In the event of a death in the Hospital, the Superintendent shall immediately notify the family or the friends of the deceased.

An indigent member who dies in San Francisco shall be buried at the expense of the Society.

§ 3. The Board shall have the books audited by an expert at least once a year.

§ 4. At the close of each term a depreciation of no less than 2% is placed against the amount represented by the buildings and furniture as designated under the heading "Hospital".

Article XVII

§ 1. These By-Laws may be modified with the approval of two-thirds of the membership of the Society or by a vote of three-fourths of the members of the Board; but in this last case the articles to be amended shall be beforehand presented as propositions to the Annual Preliminary Meeting or to any other General Extraordinary Meeting called for a definite purpose in accordance with Art. VI, Par. 5 of these By-Laws, and adopted as a recommendation by the General Annual Meeting of the members.

§ 2. Any By-Laws or amendment to the State governing corporations, shall become operative from the day of its adoption.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

Article XVIII

Dissolution.

§ 1. The Society may be dissolved by a vote of two-thirds of all the members entitled to vote.

§ 2. When the dissolution is decided as above provided, all the net assets after payment of all its debts and liabilities, shall be distributed in kind or in money to such permanent public charities as may be selected or designated by the Board of Directors in office at the time dissolution is determined.

Article XIX

Declaration of Policy.

§ 1. This Society has been founded and has always been operated exclusively for the humanitarian and charitable purpose of taking care of the sick without profit to any member or to any private individual or to the Society. Nothing shall be inserted in these By-Laws which may be contrary to the charitable, educational and scientific endeavor which it has pursued since its foundation.

§ 2. Being incorporated under and by virtue of the laws of the State of California, having never, in the past or in the present, been subsidized, endowed or supported, directly or indirectly by any foreign government, this Society is and has always been a purely American organization in its purposes, in its activities, in its mode of operation and in its underlying principles which require from its adherents obedience to the laws of the United States and respect for its Institutions.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

Rules and Regulations

Article I

§ 1. The President of the Board selects from the members of the Board, the committees necessary for the administration of the Society, the same to be ratified by the Board.

§ 2. Members of the Finance Committee shall not be members of any other commission.

§ 3. No member of the Board of Directors shall do a commercial business with the Society or serve as surety to an employee.

§ 4. All bills must be approved by the members of the special committees to which they are attributed, and the be countersigned the Finance Committee. Unless in case of absolute impossibility, any furnishings in amounts of over \$150.00 are put in competition.

§ 5. When any furnishing is put in competition, it shall be accorded to the lowest bidder complying with the conditions required. The Committee, nevertheless, retains the right to reject all bids submitted.

§ 6. Any expense exceeding \$20.00 shall be paid by check, signed by the President and the Financial Secretary.

§ 7. Two members, successively each month are named as members of the Service Committee, to supervise strict surveillance on all that concerns the administration of the Society and of the Hospital.

§ 8. The functions of Treasurer are filled by a Bank named by the Board of Directors.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

Article II

Employees.

§ 1. All employees of the Society (and Hospital) are under surveillance and control of the Board of Directors.

§ 2. The Superintendent is charged with the direction of the Hospital. He sees to the strict application of the regulations governing the administration of the Hospital and controls all merchandise received. He receives the sums due from paying patients, which he deposits at intervals determined by the Board of Directors, with the Treasurer, as certified to the Financial Secretary.

§ 3. The Assistant Superintendent, charged with accounting of the Hospital, is placed under the orders of the Superintendent, whom he replaces in case of the Superintendent's absence.

§ 4. The Collector is charged with the daily duty of collecting the admission to membership charges, and the monthly dues of the members of the Society. He is to deposit his collections with the Treasurer whenever they amount to two hundred dollars. The Collector reports his monthly collections to the Board of Directors. This report mentions the number of new members in the city and their nationality, and gives a list of those who have left the Society and the reasons for so doing.

§ 5. The accountant is charged with the general bookkeeping of the Society. He reports those members who are behind in their payments. He receives

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

at his office the charges of admission to membership and the monthly dues of members paid at his office and deposits them with the Treasurer each time they attain two hundred dollars.

§ 6. The Superintendent and the Assistant Superintendent, the accountant and the collector or collectors, shall be of French birth or of French descent. They shall as well as those occupying the principal positions in the Medical Service speak the French and English language fluently.

This paragraph may be suspended in part or whole when found necessary by three-fourth affirmative vote of the entire Board of Directors.

§ 7. The Superintendent of the Hospital shall be selected among those persons qualified as experts and who can show previous experience in conducting one or more hospitals.

Article III

Hospital.

§ 1. Paying patients whether members or non-members must, on entering the Hospital, deposit at least the amount of ten days treatment (hospitalization). When a case is to be serious and necessitating a long treatment or hospitalization, the amount of deposit required on entering shall be fixed by the Superintendent on the advice of the doctor or Doctors treating the case. The above may be modified by the Board of Directors if found necessary, in some cases.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

The amount of the ten days treatment, received in advance from any non-member patient is acquired by the Society, in case of the death of the patient before the expiration of the ten days, or in case of leaving before the ten days, where the patient had been submitted to a surgical operation. (Only the amount paid for private rooms, for the days paid but not occupied, may be re-imbursed). The above paragraph may be modified or suspended by the Board of Directors when deemed necessary by circumstances involved.

The Board of Directors determines for each individual case, and upon a detailed report, the conditions under which needy persons may be given free or part free medical attention and hospitalization, and it fixes the reduction on the regular rates that are found advisable in each case.

§ 2. Any patient treated at the Hospital who refuses to submit to the rules and regulations, menaces an official or employee of the hospital, or who, by his acts or his talk, tends to impede the services of the institution may be expelled immediately from the Hospital unless his life is endangered by so doing. In such a case, a report of the circumstances involved shall be immediately forwarded to the President of the Board of Directors.

§ 3. Any visitor creating a disturbance and refusing to observe the regulations that are called to his attention may be expelled from the premises.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

§ 4 The Superintendent is held responsible for the observance of Par. 2 and 3 of this Article.

§ 5. The Board of Directors pronounces at their next meeting against the persons found guilty of the actions cited above—if they are members, either expulsion or a suspension for a determined period according to the gravity of the fault. The Board of Directors has full jurisdiction in such cases, except in cases of expulsion, which must be ratified by the next General Assembly.

Article IV

§ 1. The annual report shall be translated into English and copies shall be printed for the use of members not acquainted with the French language.

§ 2. The Board of Directors shall publish in the principal American newspapers, notices of all meetings of the General Assemblies of the Society.

Bequests

Form of Bequest

“I give and bequeath the sum of.....

..... Dollars

to

La Societe Francaise de Bienfaisance (French Mutual Benevolent Society), San Francisco, California, (a non-profit institution).”

Place and Date.....

.....

Witness

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

Important

Members are requested to immediately notify the office of the Society of any change of address.

[Endorsed]: Filed June 27, 1944.

PLAINTIFF'S EXHIBIT No. 5

Part 2

BY-LAWS

of the

FRENCH

Mutual Benevolent

Society

Adopted at the

Special General Meeting

of March 23, 1902

San Francisco, Cal.

1931

BY-LAWS

of the

French Mutual Benevolent

Society

Article I

§ 1. Through the act of incorporation dated May 24, 1856, the Society founded on December 28, 1851, thereafter exists under the name of: French Mutual Benevolent Society.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

§ 2. The headquarters of the Society are located in the City of San Francisco, California.

§ 3. The French language is the only one used in Members' Meetings, at the Directors' Meetings, as well as in all the records of the Society.

Article II

Purpose of the Society

§ 1. The Society is founded on the basis of mutuality for the treatment of sick members; neither political nor religious questions can ever be considered in its midst.

Article III

Admission of Members

§ 1. Any person of French birth, or descendant of French or speaking French, sound in mind and in body, and less than 50 years old, can be admitted as a member of the Society.

All persons admitted as members must abide by the present By-Laws or any amendments thereto.

§ 2. The age limit is retarded until 55 years of age for any person of French nationality who enrolls during the first year of his residence in California.

§ 3. The number of members is unlimited.

§ 4. To become a member, the applicant must present himself at the Hospital between the hours of 10 and 12 a. m., or 1 to 4 p. m., sign an application blank furnished by the office, and be examined by the Resident Physician or an Intern. If deemed

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

necessary the application may be referred to a specialist of the Society. The application is then forwarded to the Committee for action thereon.

§ 5. The admission charges are as follows: Children under 15 years, \$15.00; applicants from 15 to 30 years, \$30.00. Applicants over 30 years old must pay an additional charge of \$2.00 per additional year; after the fortieth year, the extra charge is \$3.00 per year.

Admission fees are payable in advance and if the application is not accepted, they shall be refunded. However, upon demand and with the authorization of the Board of Directors, admission fees can be paid in three consecutive installments.

§ 6. Any person complying with the conditions required by the By-Laws to become a member, may, by paying a sum of \$500, become a life member, and thus acquire the full membership without ever having to pay monthly dues.

§ 7. Members having paid monthly dues either of \$1.00, or \$1.25, or \$1.50 during 15 consecutive years may, upon application, become life members for a consideration of \$250.00.

§ 8. Any person, of whatever nationality, may be elected honorary member of the Society, at a General Meeting, by a majority vote.

Article IV

Dues

§ 1. The dues are \$1.50 per month for any member past 15 years of age and for any child whose

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

parents are not members. They are reduced to 75 cents per month for children under 15 years whose father or mother is a member.

§ 2. These children, should they become orphans, or be abandoned by their parents, are exempt from the payment of any dues until the age of 17 years, and enjoy gratuitously the same privileges all other members do.

§ 3. Dues are payable from the first of the month of which a member is admitted, thereafter on the first of each month.

§ 4. The members residing in this City, pay their dues to the Collector or at the Hospital. Those residing in other localities must pay the corresponding member for their district. Payments may be made by money-order or by check.

§ 5. Any demand for an increase in the rate of the monthly dues, or in the rate charged to members for the use of private rooms, shall be preceded by an investigation to be made by a special committee appointed at a general meeting of the members and selected outside of the regular Board of Directors. This investigation to bear on the financial standing of the Society, the possible reduction of expenditures, administrative reforms and on any measure that may help the Hospital to compete advantageously with other institutions of its kind.

Article V

Privileges of Members

§ 1. The members acquire their privileges three months after their first dues and lose them when

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

allowing three months to elapse without paying any dues. The privilege can become operative before the three months elapse in case of a fracture or other unforeseen accidents, duly certified to by a doctor of the Society.

§ 2. Any member six months in arrears in the payment of his dues is thereby stricken from the rolls of the Society, and cannot be re-admitted except as a new member, and upon payment of his back dues, unless the Board of Directors may decide otherwise.

§ 3. Any member more than six months in arrears in the payment of his dues, who is over 50 years of age, and having been affiliated for 10 consecutive years, may obtain his former privileges by paying his arrearage, and presenting a health certificate duly signed by a doctor of the Society and consented to by the Board of Directors.

§ 4. Any member going to France for his service in the Army, after having notified the Board of his departure, may be reinstated at his return and will be released from the payment of arrears or of initiation fees, provided his request for reinstatement be filed during the six months following his discharge.

Article VI

General Meetings

§ 1. The members entitled to vote meet at a General Preliminary Meeting the second Sunday

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

in March of each year. They form a bureau composed of a President, a Vice-President and a Secretary.

§ 2. All propositions relating to the administration of the Society must be introduced at this meeting where they are discussed and voted upon. They are then studied by the Board, which has them published during week preceding the General Meeting, rendering at the same time an opinion upon each one.

§ 3. The General Annual Meeting of the members takes place under the direction of the Board, the fourth Sunday in March of each year. The annual report is acted upon, as well as all the propositions introduced at the Preliminary Meeting.

§ 4. The Board has the right of calling a General Extraordinary Meeting to discuss a question of general interest, but it shall call one in the following case: Upon presentation of a request containing a specific reason, signed by at least seven per cent of voting members.

§ 5. The General Meetings can only be held on Sunday, and shall be called through due notice in the newspapers at least one week in advance. In the case of an Extraordinary Meeting the notice shall contain the cause of the meeting. No question foreign to this cause can then be discussed.

§ 6. The quorum required for a General Meeting shall consist of two hundred electors.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

Article VII

Elections

§ 1. The elections for members of the Board of Directors of the Society take place on the Sunday following the General Annual Meeting.

§ 2. Members, without distinction of sex, above the age of 15 years, are entitled to vote. They must have with them their membership card in good standing and an electoral card in order to vote.

§ 3. To be eligible as a Director one must: First, be an elector, at least 21 years of age, without distinction as to sex; second, have been a member for at least one year; third, be French born or son of a Frenchman, or son of a Frenchman naturalized.

§ 4. All elections are by secret ballot and on a plurality of the votes. They are presided over by a bureau composed of a president, a secretary, two judges of election and at least four tellers. This bureau may be nominated at the Preliminary Meeting, but in this case to be legally constituted it shall be ratified by the General Meeting.

§ 5. A candidacy to the office of Director must be presented by a member in good standing at the Preparatory Meeting or to the Board of Directors during the two weeks following. The Board must prepare a list of the candidates who meet the requirements prescribed by the By-Laws. The list closes at 5 p. m. on the Saturday preceding the General Meeting and shall be published from that

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

day on in one or more French newspapers until the following Sunday, the day of the elections.

§ 6. The Board shall have printed two kinds of ballots, one on white paper and the other on colored paper. The white shall be placed at the disposal of the members three days before the elections; and the colored, stamped with the seal of the Society—the only ones to be used as ballots—shall be given out, upon presentation of a voting card, only on the election day, in the voting hall, where shall be arranged beforehand a special installation so that each voter may prepare his ballot in secret. The ballots shall contain the names of the candidates in alphabetical order and be similar to the official ballots used in the municipal elections of this City.

§ 7. After each name there is a square and the voter shall make a cross in the square placed on the right of the name of the candidate for whom he wishes to vote. Any irregular ballot—that is one containing more names voted than there are candidates to be elected—shall be declared, when the ballots are being counted, null and void for the part in which such irregularity appears.

§ 8. As soon as the results are determined the president of the elections shall announce them; they shall then be entered in the report which, after having been signed by the members of the bureau of elections, is given to the president of the Society who orders its publication.

§ 9. Any member who shall vote, or try to vote

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

more than once at an election or in any secret vote, shall be expelled from the Society.

Any person voting under a name other than his own, shall be expelled from the Society, and if not a member shall at no time be admitted as such.

Article VIII

Administration

§ 1. The Society is governed by a Board of Directors of 15 members elected in conformity with Art. VII.

§ 2. In the week following the elections, the outgoing Board shall install the new Board and transfer at this meeting all the documents and certificates of stock belonging to the Society entrusted in its care, the inventory of which shall be spread out on the minutes.

§ 3. The directors from their bureau by electing by an absolute majority, a president, two vice-presidents, a financial secretary and a recording secretary.

§ 4. The Board meets in regular meeting at least twice a month on such days as it determines.

§ 5. The President calls the Board in extraordinary meeting whenever he deems it necessary, or when a request for a call meeting is addressed to him by five Directors.

§ 6. The President, or one of the Vice-Presidents, or in their absence a member chosen by its colleagues present, presides over the meetings of the Board.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

§ 7. The Board can hold a meeting only if eight members at least are present, and all motions shall be carried by a majority of those voting. The roll call on a motion takes place when it is requested by two members of the Board, and the vote of each member present shall be recorded in the minutes; likewise a record shall be made of a member abstaining from the vote.

§ 8. After a motion has carried, any request for reconsideration of the vote shall be presented at the same meeting by one of the members having voted with the majority; but the reconsideration shall only take place at the following meeting.

§ 9. The minutes of each meeting shall be drawn up by the Secretary, approved by the Board and signed by the President and Secretary.

§ 10. The Board appoints all the employees of the Society, fixes their salaries and the amount of bonds for those who incur responsibilities such as the Superintendent, the Collector, the Accountant, etc. These bonds shall be provided by a society legally organized and acceptable to the Board.

§ 11. Any member of the Board absent from three successive meetings, who has not obtained a leave of absence, and was not excused on account of illness, is considered as having resigned.

§ 12. The Board fills all vacancies unless five or more should take place simultaneously. In this case the Board shall, before the expiration of ten days following the acknowledgment of said vacancies,

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

call the members in conformity with Art. VI for an election.

§ 13. The Board shall annually publish the report of its administration the week preceding the second Sunday in the month of March.

§ 14. The Board shall, under no pretext whatsoever, make use of the credit, the name or the property of the Society for any operations outside of the interest of the Society.

§ 15. The Board has the right to elect as Honorary President of the French Mutual Benevolent Society an Ex-President who has rendered valuable services to the Society, whenever such a step seems appropriate.

The Honorary President shall be named by a majority of the members of the Board for the time the latter stays in office. There should never be more than one Honorary President in the Society.

§ 16. Past-Presidents of the Society have the right to be present at the meeting of the Board of Directors, and to take part in discussions. They have however no right to vote.

Article IX

Funds

§ 1. The receipts of the Society are composed of admission fees, monthly dues, income from investments, life members and life boarders admission fees and the income from the operation of the Hospital.

§ 2. The Society may in addition receive dona-

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

tions which will be used as much as possible to conform with the wishes of the donor. Unspecified donations however shall be deposited in a special fund to be called the Benefactors Fund of la Societe Francaise de Bienfaisance Mutuelle.

§ 3. The amount determined by the Art. XV, §4 of the present By-Laws, and representing the depreciation on Buildings, Furniture and Equipment, shall be deposited in a special fund to be called the Depreciation Fund.

The Benefactors Fund and the Depreciation Fund shall constitute a general fund to be called the Rebuilding Fund, which will be reserved for future additions and improvements to the Hospital. The income from these funds shall revert to the current funds of the Society. The Rebuilding fund can be used only upon a majority vote of the members present at a General Meeting.

§ 4. The Board deposits the funds of the Society where they may draw interest, although reserving a sum sufficient to meet current expenses. The Board cannot settle, without a vote of the members, any question in which the interests of the Society might be engaged for a sum exceeding \$10,000.

§ 5. The name of any donor of a sum exceeding \$100 together with the amount donated, shall be printed in the annual report and be read at each General Meeting.

§ 6. Beginning March 26, 1928, Life Member-

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

ship Admission Fees shall be deposited in a Special Fund, which shall be used only upon a majority vote of the members present at a General Meeting. The income from this fund shall revert to the current funds of the Society.

Article X

Medical Service

§ 1. Candidates for the position of Doctors for the Society must, when filing their applications, present at the same time their diplomas and their license from the State of California, and specify the position for which they apply. A diploma is recognized by the Board only if granted by a college requiring a course of at least four consecutive years, and if it carries with it the right to practice in the Country or State where it was granted. The doctors having already served the Society are not subject to these conditions.

§ 2. The doctors are elected by the Board on roll call.

§ 3. The medical service is organized as follows:

First, salaried physicians and surgeons making a tour of visits in the Hospital every morning and also receiving in consultation the city members. They shall also go to the Hospital each time they are called there for an urgent case.

Second, a resident physician at the Hospital.

Third, at least two internes.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

Fourth, one or more physicians whose duty is to visit sick members, residents in the City and County of San Francisco.

Fifth, specialists whose services are defined by the Board.

Sixth, one or more dentists, who receives for his fees an amount fixed by the Board for each tooth extracted.

§ 4. The doctors treating at the Hospital and the city physicians shall be in consultation at their offices two consecutive hours each day, excepting Sunday. Consultations shall be given the members at the Hospital every Sunday, from 8 to 10 a. m., alternately, by one of the salaried physicians.

§ 5. Upon the request of a member, the city physician shall, but only in case of necessity, call in for consultation the physician treating at the Hospital. He shall, furthermore, be present at the operations performed at the Hospital each time he is requested to do so by one of the physicians treating at the Hospital, unless he himself is detained by an urgent case in his service.

§ 6. All the doctors are placed under immediate control of the Board. They shall conform, for their work, with the By-Laws of the Society as well as with the regulations established by the Board.

§ 7. Any doctor desirous of taking a leave of absence shall have to be authorized by the Board and supply a substitute who receives his salary and who shall first be accepted by the Board.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

§ 8. All doctors licensed to practice medicine, including the Society doctors, excepting the resident physician, may send their own patients to the Hospital and take care of them there. These patients pay to the Society the prices paid by the paying patients.

§ 9. The regular doctors of the Society have not the right to interfere with the treatment of patients cared for by outside doctors without the consent of the latter.

Article XI

Treatment of Members

§ 1. Each member shall present his pass book to the doctor he consults. The sick members are entitled to visits at their residence from either city physician if they reside within the boundaries set forth in paragraph 4, Art. X, and if their illness prevents them from going to the physician's office. They are entitled to treatment in the Hospital, but they can only remain there if they follow a regular treatment. They are also entitled to consult there the doctors at their regular consultation hours, as well as to go to the offices of the doctors in charge of this service for consultation.

§2. The members being treated at the Hospital occupy the wards, but they can receive medical attention in private rooms by paying no less than one dollar and one half per day.

§ 3. All prescriptions given to members by the

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

Society doctors are filled free of charge at the drug store of the Hospital.

§ 4. Prescriptions given to members by outside physicians are also filled in our drug stores.

§ 5. Upon written request by a physician of the Hospital a member residing within the boundaries of the City of San Francisco is entitled to the use of an ambulance by communicating with the Hospital.

In urgent and needy cases, members may be brought to the Hospital at the expense of the Society.

Article XII

Patients Non-Members

§ 1. The Society admits in the Hospital patients who are non-members, treated at the minimum price of three dollars (\$3.00) per day in the wards, and five dollars (\$5.00) and up per day in private rooms. The price of the board and extra room for the nurses is specified in the regulations of the administration.

Article XIII

Special Admission

§ 1. The right to be taken in as a pensioner does not exist.

§ 2. The Board, for benevolent purposes, may admit, temporarily, at the expense of the Society, a member not ill, who is at least 65 years of age and a member of the Society for thirty consecutive years, without means of existence, or incapacitated through age or infirmity from earning his liveli-

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

hood. The manner in which the members admitted under these conditions shall be housed and kept is determined by the Board, which may impose upon them certain work they must accept, under penalty of expulsion.

§ 3. The Board may admit as life pensioners, and after payment of a sum determined by the Board, members past 65 years of age having belonged to the Society for at least twenty consecutive years. These admissions shall be ratified by the members at a general meeting.

If the approval is refused, the Board deducts from the sum deposited an amount equal to no less than \$1.00 per day, representing the cost of maintainance of the member during his stay at the Hospital. The days during which he was sick are not included in this account.

§ 4. To operate a saving for the Society as well as to grant more comforts to certain members, the Board may send to France, or another country, at the expense of the Society, the incurables who file a request and sign a declaration of renunciation to all their rights. The request shall, in all cases, be accompanied with a certificate from two doctors of the Society stating the character of the patient's illness.

Article XIV

Penalties

§ 1. The Board shall expel any member convicted of being ill at the time of his first applica-

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

tion; of having made a false statement concerning his age, or for not having conformed with all the conditions required by Art. III. The same penalty is incurred by the member who feigns illness or who, by any means whatsoever, prolongs the illness he is afflicted with.

§ 2. Any member who lends his pass book to a person non-member for aiding in perpetrating a fraud, or who would cause damaging prejudice to the interests or the good reputation of the Society, shall be punished by expulsion.

§ 3. The members expelled in accordance with this article or any article of these By-Laws, in any case whatever, are not entitled to any reimbursement of the sums they paid in to the Society for admission or dues. Cases of expulsion shall be ratified by the General Meeting.

§ 4. Employees of *La Societe Francaise de Bienfaisance Mutuelle* are forbidden under penalty of expulsion from engaging in electoral campaigning.

Article XV

§ 1. An attorney, a notary or minister of a religious cult shall be called immediately to the Hospital at the request of a patient.

In the event of a death in the Hospital, the Superintendent shall immediately notify the family or the friends of the deceased.

An indigent member who dies in San Francisco shall be buried at the expense of the Society.

(Testimony of Edward B. Pomme.)

Plaintiff's Exhibit No. 5—(Continued)

§ 2. The Board shall have the books audited by an expert at least once a year.

§ 3. At the close of each term a decrease of no less than 2% is placed against the amount represented by the buildings and furniture as designated under the heading "Hospital".

Article XVI

Corresponding Members

§1. The Corresponding Members are appointed by the Board. They receive the initiation dues and also the dues of the members in their district giving receipt therefor, and address monthly to the Accountant a statement of their accounts, and to the Financial Secretary their receipts, deducting a sum of five per cent for their services. They shall conform with the instructions of the Board.

Article XVII

§ 1. These By-Laws may be modified with the approval of two-thirds of the membership of the Society, or by a vote of three-fourths of the members on the Board; but in this last case the articles to be amended shall be beforehand presented as propositions to the Preliminary meeting, and adopted as a recommendation by the General Annual meeting of members.

§ 2. Any By-Laws or amendment to the By-Laws not conflicting with the laws of the State governing corporations, shall become operative from the day of its adoption.

[Endorsed]: Filed June 27, 1944.

(Testimony of Edward B. Pomme.)

Mr. Dessouslavy: Q. What are the qualifications for membership?

A. In order to be a member a person has to be either French or speak French or be of French descent.

Q. Does French descent mean all or partly French descent? A. Partly.

Q. Can also members of the family of a qualified member join? A. Yes. [83]

Q. The bylaws do not provide for that?

A. No.

Q. That has been the practice for many years?

A. Yes.

Q. So that if you had a member partly of French descent and his wife was of some other nationality, she is eligible? A. Yes.

Q. Anyone speaking French is also eligible?

A. Anybody who speaks French.

Q. If some stranger presented himself and spoke French, would you put him through a searching examination?

A. No, we accept his word.

Q. If he appeared to be a desirable member you would not put him through a searching examination to find out how much French he spoke, would you?

A. No.

Q. If he appeared to be a desirable member would you accept him? A. Yes.

Q. Does the plaintiff solicit members?

A. No, never.

(Testimony of Edward B. Pomme.)

Q. Do you pay any commission to anybody for bringing in any members? A. No.

Q. That has always been true, has it?

A. Yes.

Q. By the way, in connection with the nurses' training school, there are three full-time instructresses? A. Yes.

Q. They give all their time to that?

A. Yes.

Q. There is also a superintendent of nurses?

A. Yes.

Q. And the training and the teaching of nurses is under the supervision of the director of the school of nurses? A. Yes.

Q. Is the nurses' school accredited by the State Board of [84] Nurse Examiners? A. Yes.

Q. Now, in addition to the nurses' home there are some school rooms in the main hospital buildings for the nurses, are there not?

A. Yes, two of them.

Q. Those rooms have desks and all the other paraphernalia of a schoolroom? A. Yes.

Q. In addition to those two schoolrooms, in the main hospital building there is also a dietetic schoolroom? A. Yes.

Q. Which is equipped with stoves and other paraphernalia? A. Yes.

Q. Would it sometimes happen that a member, though entitled to a staff physician chooses his own physician? A. Yes, sometimes.

Mr. Dessouslavy: In supplementing my state-

(Testimony of Edward B. Pomme.)

ment wherein I said originally the Treasury Department held us to be exempt, and we very largely followed out a course of conduct since that date, I could read this letter dated July 14, 1937 signed by Charles T. Russell, Deputy Commissioner of Internal Revenue, holding the plaintiff exempt from taxes. May I read it?

Miss Phillips: I think it might be offered for the Court's perusal. Of course, our position is that an earlier ruling is not conclusive; it can be taken into consideration, but I point out that it is not conclusive on the present case at all.

The Court: Let it be admitted in evidence and deemed read in evidence. It will not be necessary to read it now; I [85] will read it.

(The letter was marked Plaintiff's Exhibit 6 in evidence.)

Mr. Dessouslavy: It is pleaded in the complaint.

The Court: You say it is pleaded?

Mr. Dessouslavy: Yes.

Q. Before the plaintiff received this letter of July 14, 1937, had it made some deductions from employees' wages for taxes? A. Yes.

Q. After it received this letter what became of the deductions that had previously been made?

A. All of the moneys were refunded.

Q. Between the receipt of that letter of July 14, 1937 and about the 1st of March 1939 did plaintiff make any further deductions from employees' wages whatsoever? A. No.

Q. All of the employees' taxes in respect to the

(Testimony of Edward B. Pomme.)

period to April 1, 1939 were entirely paid from plaintiff's own funds; that is a fact, is it not?

A. Yes.

Q. And plaintiff has never gotten a cent of those payments from any single individual, isn't that correct?

A. That is correct.

The Court: Do the nurses receive a salary?

Mr. Dessouslavy: Q. Do the nurses receive a salary while in training?

A. Yes, up to \$30 a month; 15, 20, and 30.

Q. That is student nurses? A. Yes.

Q. By the way, are donations and gifts shown among the plaintiff's [86] receipts? A. No.

Q. They are credited direct to the benefactors' fund? A. That is right.

Q. Permanent improvements, are they charged to receipts and disbursements, or are they charged sometimes against the benefactors' fund?

A. They are sometimes charged against the benefactors' fund.

Q. But more usually they are charged as disbursements? A. As disbursements.

Mr. Dessouslavy: That is all.

Cross-Examination

Miss Phillips: Q. Mr. Pomme, I am interested in your rules of eligibility of members. I take it from what you said that a person of entire French descent or partial French descent joins upon a showing of what his descent is? A. Yes.

Q. Is there a regular form that a person signs

(Testimony of Edward B. Pomme.)

with his name, giving his place of residence, birth, and occupation? A. That is right.

Q. Do those applications come up regularly at the board of directors' meetings? A. Yes.

Q. Each month? A. Twice a month.

Q. A person who speaks French, though he may be American or British or Spanish or something else, if he speaks French, under the rules he is entitled to join? A. Yes.

Q. Does he make any showing of his ability to speak French? [87]

A. We question him when he makes application.

Q. You have some idea whether he speaks it?

A. Yes.

Q. Then if he is accepted the wife or dependent of that member who joins then may become a member of the society? A. Yes.

Q. The children born to such a couple, do they have the right to come in?

A. They have a right also.

Q. At what age does the couple begin to pay dues for a child—as soon as the child is born?

A. As soon as the child is admitted as a member.

Q. A parent then applies for the child's membership? A. Yes.

Q. And then pay dues? A. Yes.

Q. Which is now \$1 a month? A. Yes.

Q. Then when that child becomes seventeen or eighteen—— A. Fifteen.

Q. —he is entitled to membership in his own right? A. Yes, a member from the start.

Q. And he pays the monthly rate? A. Yes.

(Testimony of Edward B. Pomme.)

Q. And then that child becomes a member for the rest of his life?

A. Well, as long as he pays his dues.

Q. Then you really reach the point that a child becomes a members because his family speaks French; the child does not necessarily speak French, yet he can become a member? A. Yes.

Q. So that in the long run would you say that at the present time you have a good many people as members over a long period of years who you might say have an inherent right to become [88] members of this society? A. Yes.

Q. So that you always have a substantial number of people who are all French or of French descent? A. Yes.

Q. And some who actually speak French?

A. Yes.

Q. And a considerable number of people who would come in as members because they were children of original members?

A. That is right.

Q. But who if actually joining themselves could not pass the qualification test? A. Yes.

Q. I think that must be so, and I was interested in figuring out whether it was so. In testifying as to the right of a member, if I understand you correctly, a member, when he becomes hospitalized, goes into a ward, pays for a ward room 50 cents a day?

A. For a ward bed.

Q. And gets free medicine, free operating room, free laboratory tests, and other medical attention?

(Testimony of Edward B. Pomme.)

A. I think there is a little mistake on my part there. There is a charge of 50 cents for some treatment, and 25 cents for therapy treatment, and the 25 cents is for X-rays, and I think if my memory is right those apply to those who are in the hospital, to all hospitalized.

Q. To all who are hospitalized? A. Yes.

Q. Whether they are in a private room or ward room? A. Or outside, yes.

Q. I think you testified that the therapy and some of these [89] other charges were at the rate of 50 cents a day? A. Yes.

Q. The charge for the ward bed is 50 cents a day? A. Yes.

Q. And the charge for a person who comes in, the general public, who is not a member, is at the rate of \$5 a day? A. Yes, \$5.

Q. That is the common rate in San Francisco for a ward? A. Yes.

Q. That is about what all hospitals charge? A. Yes.

Q. The private room rate for a member, you said, is 50 percent of what is charged to a non-member, that is, a member of the general public?

A. Yes.

Q. That depends on the location of the room, whether it has a private bath?

A. Yes. We have several prices.

Q. Your charge to the public is about the same as that in the hospitals in San Francisco?

A. Yes.

(Testimony of Edward B. Pomme.)

Q. There is not a great deal of variation?

A. No, standard rates.

Q. Pretty nearly standard? A. Yes.

Q. You testified, I think, that a member coming in gets all of these privileges for a six months' period? A. Yes.

Q. Except in the case of tuberculosis, and then he has an indefinite time limit—there is no limit on the time he may remain? A. That is correct.

Q. What happens if a member has come in and has had a ward room, let us say, for six months, paying this very moderate rate of 50 cents a day, that is, substantially \$15 a month, and he has [90] really got a ward room for \$90; at the end of six months he still needs medical care; let us say he is a person who has had some terrible automobile accident and he is pretty well smashed up; what kind of a rate do you charge at the end of six months?

A. He is allowed to stay as long as he wants for \$2 a day.

Q. The charges for physiotherapy treatment or X-ray are just the same?

A. They remain the same.

Q. What about the medical charges?

A. There is no medical charge.

Q. Even if he stays there a year or two at the \$2 a day rate? A. Yes.

Q. Does he continue to get free medicines?

A. Always the same, the same rate of 10 cents.

Q. Suppose after he has been there six months he needs an operation?

(Testimony of Edward B. Pomme.)

A. The operation is free.

Q. The operation is free? A. Yes.

Q. Your staff doctors are paid a salary by the hospital itself? A. Yes.

Q. So that they make no charge to the patient?

A. No.

Q. The amount that the hospital pays the doctor, might I ask, is that dependent on the number of patients a particular doctor has?

A. No; they are paid what I would call a retaining fee, I would say, of \$25 a month to about \$200 a month.

Q. But if a doctor comes on a retainer fee of \$25, if he finds [91] he has to do a great deal of work—if a doctor is on a retainer fee of \$25 a month, if he has a good deal of work to do, do you increase it?

A. It happens very seldom.

Q. Now, the doctors operate, do they?

A. Yes.

Q. Does the fee depend on, you might say, the standing of the doctor in the community, whether he is a specialist, or how do you do that?

A. I would say it depends on the specialty.

Q. Now, a person in the hospital who is a member has the privilege of calling some doctor not on the hospital staff? A. Yes.

Q. Whom you do not pay a salary?

A. We do not pay the salary.

Q. In that case the patient pays his own doctor, and that is between them, and you have nothing to do with that?

(Testimony of Edward B. Pomme.)

A. We have nothing to do with that.

Q. You spoke about the applications of sick and indigent members. That is, a person who has been a member for quite a while no longer is able to pay dues, and yet wants to continue this protection, you might say, to his health. Those apply to the board of directors? A. Yes.

Q. Is there a regular form for that?

A. There is no form for that.

Q. There is no written application in which he would say he had been a member for such a time?

A. No. Sometimes he doesn't even make an application, but the office or somebody connected with the hospital makes a report of it.

Q. Then the board considers it, and if a man or woman is unable [92] to pay dues but needs protection, they may give him the protection?

A. Yes.

Q. Does the relief, you might say, to such a member as that, come out of the general relief fund that you spoke of?

A. Yes, that was created for that special purpose.

Q. It was created for a special thing such as that? A. Yes.

Q. What is the source of this relief fund to which you have referred?

A. The original amount of \$2000 was out of funds advanced by the society in 1906, and since that time that fund has been by donation, but the donation has to be specified, it has to be for that particular fund, or otherwise it is given to the benefactors' fund.

(Testimony of Edward B. Pomme.)

Q. Otherwise it goes to the same permanent improvement? A. Yes.

Q. Is there any organization attached to the society that may give grand parties or balls or in some way raise money for the hospital?

A. No organization for that.

Q. There is no organized group?

A. We happen to have one, but I don't think it has got any official connection with it.

Q. I wondered whether or not there was any group of French people here who from time to time might conduct some benefit or entertainment so as to contribute to this fund.

A. No, there is nothing like that.

Q. This relief fund simply is a fund that has accumulated over a period of years from gifts and donations? A. Yes.

Q. It might be by will or it might be by a person in his [93] lifetime who wanted to give a gift for that particular purpose? A. Yes.

The Court: Q. Do you get any donations from the Community Chest?

Miss Phillips: That is a question I was going to ask you. You spoke about there being emergency cases in the vicinity. Do you get any contributions from the Community Chest?

A. We do not get any contribution whatsoever.

Q. Didn't you used to get some?

A. We used to get some kind of compensation amounting to—I don't remember how much; it was about \$1500 a year; but it has been discontinued.

(Testimony of Edward B. Pomme.)

We do not get anything from the Community Chest.

Q. When was the last year you got a contribution from the Community Chest?

A. It was last year—the contribution has been discontinued for about a year.

Q. It was discontinued last year? A. Yes.

Miss Phillips: Q. Do you take cases of emergency? A. Yes.

Q. Is there any charge if a person comes in the hospital due to an automobile accident which happens in the vicinity? Does the hospital make any charge for that?

A. First aid is given free of charge, but after that we take them in under the regular dues. Of course, we tell them that they have to pay, and if they cannot pay we furnish transportation to the City and County hospital or whatever institution they go in, but a person is never refused treatment.

Q. He comes in and gets temporary treatment until he can get in [94] touch with his own doctor?

A. Yes.

Q. Then the arrangement after that depends on the individual?

A. Yes. Of course, if a person cannot be moved or he has to stay in the hospital, we keep him.

Q. You do keep him if he cannot be moved?

A. Yes.

Q. But it would be on a charge?

A. It would be on a charge, but sometimes we cannot collect, and sometimes we have to stand the loss.

(Testimony of Edward B. Pomme.)

Q. You spoke about an old people's home. The old people's home is the home which accommodates fifteen? A. Yes.

Q. Did I understand you that there are about a dozen other people who need hospital care but who also are there for life?

A. They are simply left there because they have no other means of taking care of themselves, they have to stay there, and we keep them there; they are indigent people, sometimes paralyzed or too old to do anything.

Q. Is the right of a person to stay in the hospital a matter of application to the director?

A. Yes, an application, but a member has no right to become a life boarder—that right does not exist.

Q. Each case is an individual case?

A. Yes, that is an individual case.

Q. If a member could make a payment to defray that expense, the society would accept it, of course?

A. Yes; that all depends on the decision of the board. [95]

Q. As a matter of fact, can you tell us whether or not the life boarders, as you call them, for the most part give something?

A. Some of them do. I would judge about 55 percent pay some amount, but generally that amount is not in proportion to what they receive. We very seldom get more than \$25 from the life boarders.

Q. Is that amount paid in cash?

A. Always in cash.

(Testimony of Edward B. Pomme.)

Q. A cash payment?

A. Yes. There are no monthly dues at all.

Q. What becomes of a fund like that when a life boarder comes in—say a man is paralyzed and maybe expected to live eight or ten years, or perhaps not that long, and pay, says, \$25. Does that go into your receipts for the current year?

A. Yes, that goes into the general fund.

Q. That is simply receipts for that year?

A. Yes.

Q. I observe in the society's report for the year 1944, which has already been received in evidence as Plaintiff's Exhibit 2, an item, "\$21,200, Life Boarders Fund." How is that life boarders' fund treated? You stated a minute ago it goes in as receipts.

A. Yes.

Q. But do you set it aside?

A. No. We used to do that last year, because there was some kind of a law in the State of California requiring institutions who have old people's homes to set aside a certain amount of money for treatment of those people, and I understand that that law has been repealed. I don't know. [96]

Q. Whatever it is, you set up on your books the amount that the life boarders pay?

A. Yes, as specified by the State.

Q. That is considered, you might say, in the nature of a trust fund?

A. Yes, that is a trust fund, but that is discontinued now.

Q. Are you still maintaining it?

(Testimony of Edward B. Pomme.)

A. No, we don't maintain that fund any more.

Q. You spoke of a depreciation reserve, I think, at the beginning of 1937; I am not quite sure now. In your annual report of 1944 you have a depreciation reserve of \$144,000. Can you explain a little more how that depreciation reserve is set up? Is that a bookkeeping figure?

A. No, that is an actual cash figure. That reserve represents the amount of depreciation for the year or the accumulation of the year which we have put aside in cash.

Q. That is like any sound business concern; you compute the annual depreciation upon your permanent capital investment? A. Yes.

Q. Because that capital has worked out just that much each year? A. Yes.

Q. You actually set aside in advance that amount to take care of future improvements, is that correct?

A. Yes.

Q. You have actually put in the bank \$144,000 to take care of your depreciation?

A. Yes, in the bank or in securities.

Q. In securities? A. Yes. [97]

Q. That is separate from from your benefactors' fund, is it? A. Yes.

Q. The fund of \$76,000?

A. That is in addition.

Q. Of course, it is separate from your total capital investment which was built up by gifts?

A. Yes.

The Court: Q. Do you use these moneys for any other purpose except replacements?

(Testimony of Edward B. Pomme.)

A. They cannot be used except with the permission or authorization of the members.

Miss Phillips: Q. Do you ever have any annual meeting of the members? A. Yes.

Q. When does that come?

A. That comes the fourth Sunday of March of each year.

Q. Your regular annual business meeting?

A. Yes.

Q. Is your board of directors elected at that time?

A. No. We have two sessions of the annual meeting. We have one on the second Sunday of March of each year, and then we have the second session, which we call the general meeting, and then two weeks later we have the election of the board.

Q. Formal notice is given out to all the members? A. No, we publish that in the paper.

Q. Are they well attended?

A. Not lately.

Q. However, you do have an annual business report that is given out? A. Yes.

Q. You have your officers elected, and so forth?

A. Yes.

Q. Mr. Pomme, have you the figures which would show at this time how your income is set up for any one of the years here in [98] controversy, how your total receipts for a years are subdivided? You have so many members—let us say 9,500—who pay in so much. Then you have hospital receipts from non-paying members. Have you those figures?

(Testimony of Edward B. Pomme.)

A. Yes.

Q. Mr. Dessouslavy has just handed me a paper showing income distribution as to source for the years 1937 to 1944, inclusive, and in columns showing dues and admission fees, income from dividends, interest, and rents, special admissions, miscellaneous, paid by members for hospitalization, and then amounts paid by non-members for hospitalization, and then total income from all sources. I would like to ask you what this column, "Special Admissions,"

is. A. That is money paid by life boarders.

Q. This income from life boarders, do you charge to each member a monthly rates against the fund he has paid? A. No.

Q. You just keep that as a special fund?

A. No, that money is put in the general fund and used as we go along.

Q. I mean, do you use it for each individual or keep it there?

A. No, we keep it there. It is paid into the general fund and used as we go along.

Mr. Dessouslavy: I would like to have that paper introduced as plaintiff's exhibit next in order.

(The paper was marked Plaintiff's Exhibit 7 in evidence.)

(Testimony of Edward B. Pomme.)

PLAINTIFF'S EXHIBIT No. 7

INCOME DISTRIBUTION AS TO SOURCE

Period ending last day of Feb.	Dues and Admision Fees	Dividends Interests Rents	Special Admissions	Miscellaneous	Paid by Members for Hospitalization	Total Income from Society	Paid by non-members for Hospitalization	Total Income from all sources
1937	153,473.00	8,774.75	8,000.00	4,420.84	57,769.47	232,438.06	152,171.55	384,609.61
1938	161,436.25	8,372.76	7,250.00	2,947.85	64,315.10	244,321.96	149,039.28	393,361.24
1939	171,460.50	8,270.92		6,347.18	55,979.02	242,057.62	156,445.77	398,503.39
1940	178,717.75	7,422.66	10.00	1,322.33	69,572.41	257,045.15	152,585.02	409,630.17
1941	177,978.75	6,147.98	6,877.50	5,071.62	60,940.94	257,016.79	177,341.30	434,358.09
1942	176,857.00	5,341.06	5,000.00	1,432.85	48,011.90	236,642.81	229,828.11	466,470.92
1943	176,452.75	6,093.25		1,291.79	20,239.10	204,076.89	329,914.05	533,990.94
1944	168,822.00	7,372.71		1,100.39	43,131.65	220,426.75	460,021.81	680,448.56

[Endorsed]: Filed June 27, 1944.

(Testimony of Edward B. Pomme.)

Miss Phillips: Q. Mr. Pomme, I would like to ask you if you have any showing here as to your net income during this [99] eight-year period. Mr. Dessouslavy has handed me a paper. You have here gross incomes for the year 1937, for instance, of \$384,000, as your total income from all sources, and your total expenditures exceeded that. I think this might be offered as the next exhibit.

Mr. Dessouslavy: Yes.

(The paper was marked Plaintiff's Exhibit 8 in evidence.)

PLAINTIFF'S EXHIBIT No. 8

GROSS RECEIPTS AND DISBURSEMENTS

Year Ending Last days of February	Gross Receipts	Gross Disbursements
1937	\$384,609.61	\$410,279.37
1938	393,361.24	428,635.92
1939	398,503.39	418,508.22
1940	409,630.17	412,590.52
1941	434,358.09	489,552.30 ²
1942	466,470.92	461,407.09
1943	533,990.94	505,085.02
1944	694,288.50 ¹	624,438.38
	Totals \$3,715,212.86	Totals \$3,750,496.82
		Less 3,715,212.86
		\$ 35,283.96

Year Ending Last day of February	Excess in Receipts	Excess in Disbursements
1937		\$ 25,669.76
1938		35,274.68
1939		20,004.83
1940		2,960.35
1941		55,194.21

(Testimony of Edward B. Pomme.)

1942 ..	\$ 5,063.83	
1943 ..	28,905.92	
1944 ..	69,850.12	
	<hr/>	<hr/>
Totals	\$103,819.87	\$139,103.83
		Deduction 103,819.87
		<hr/>
Net Excess in Disbursements		\$ 35,283.96

¹ Includes \$13,839.94 Unemployment Tax refunded by State.

² Includes \$63,890.66 Social Security taxes, in part previously carried as asset under caption, "Taxes in dispute".

[Endorsed]: Filed June 27, 1944.

Miss Phillips: Q. This shows the gross receipts and gross disbursements for the whole period. This also shows for the years 1937 to 1941, inclusive, you had an excess in disbursements over receipts ranging between \$2900 and \$55,000, and then for the last three years, 1942, 1943, and 1944, you have an excess of receipts over disbursements. When you take, for instance, the year 1944, it shows that you have an excess of receipts over disbursements amounting to \$69,000. What became of this surplus for that particular year?

A. Well, that is an accumulation of surplus to use later on when it is necessary.

Q. That would take care of the deficit for the five preceding years? A. Yes.

Q. In showing your gross expenditures for a particular year you include this rate of depreciation which we have already talked about? A. Yes.

Q. And it goes into a fund to take care of future replacements? A. Yes. [100]

(Testimony of Edward B. Pomme.)

Miss Phillips: Counsel has also just shown me the way you set up your depreciation account for the years 1937 to 1944, inclusive. Will that be plaintiff's next exhibit?

Mr. Dessouslavy: Yes.

(The paper was marked Plaintiff's Exhibit 9 in evidence.)

PLAINTIFF'S EXHIBIT No. 9

Year Ending Last Day of February	Depreciation
1937	9,936.71
1938	10,041.12
1939	10,432.54
1940	10,263.94
1941	10,105.44
1942	10,122.25
1943	10,085.00
1944	13,705.22
	<hr/>
	84,692.22

[Endorsed]: Filed June 27, 1944.

Miss Phillips: Q. Mr. Pomme, over a period of years did you ever look back over the records of the society to ascertain whether in the main the society has operated at a loss or whether it has broken even?

A. Well, it has been operated at a loss generally, but if it had not been for the donations and gifts I do not think the society could have subsisted.

Q. Of course, if you operated at \$10,000 a year loss and ran for 90 years you would not be in existence unless somebody took care of you. A. No.

(Testimony of Edward B. Pomme.)

Q. But would you say in the main you have operated at a loss? A. Yes.

Q. Occasionally you have had years in which you broke even? A. Yes.

Q. And some years you have gone a little bit over, is that right? A. Yes.

Q. Is that a fair statement?

A. Yes. For instance, this year there have been exceptionally good results. But some years it was very low.

Q. This year has been the case of everybody else: Your hospital has operated to full capacity?

A. Yes. [101]

Q. Have you had to close any ward for lack of nurses? A. We have had some difficulty.

Q. But you have not had to close any?

A. No, we did not close it.

Q. You have been able to keep going at full capacity? A. Yes, but it is awfully hard.

Q. I think you said that you had seven internes and three regular doctors. A. Yes.

Q. That is three doctors to take care of people and stay there, and seven internes who are in training? A. Yes.

Q. You said that your hospital has been approved by the American Medical Association as a hospital for the training of internes; is that right?

A. Yes.

Q. Do you keep a record of all cases?

A. Oh, yes.

Q. All diseases? A. Oh, yes, we do.

(Testimony of Edward B. Pomme.)

Q. Pathological records? A. Yes.

Q. To what extent are they open for study by doctors?

A. They are always open to doctors.

Q. Any doctor could come and look at your records? A. Yes.

Q. Is it one of the requirements of the American Medical Association that a hospital keep accurate records of all the cases treated? A. Yes.

Q. You only have five internes now?

A. Yes.

Q. How does that happen?

A. There is a shortage of internes [102] at the present time, but we expect to have a full complement next month.

The Court: Q. They are in the Army now; is that the reason for your shortage?

A. Of course, I am not very familiar with that, but from what I have heard there seems to be a shortage lately, the last few months, but the superintendent advised me that we will have a full complement in July.

Miss Phillips: My impression was the medical schools were running full, because the conclusion of the medical courses is more valuable to the Government.

The Court: There is a shortage of doctors just the same.

Miss Phillips: Yes, there is no doubt about that.

Mr. Dessouslavy: That is why the internes are so valuable, because they will be resident physicians.

(Testimony of Edward B. Pomme.)

The Witness: They are not resident physicians at the present time. The resident physicians have been called to the Army, and we have one of the internes who is acting as a resident physician for the time being.

Mr. Dessouslavy: Q. Ordinarily you have three resident physicians? A. We have three.

Miss Phillips: Q. There is one point that I do not think has been brought out: You have a larger number on monthly dues at \$1.75, but doesn't a member pay an initiation fee when he joins?

A. Yes.

Q. How much?

A. It is \$25 for a minor up to fifteen years [103] of age; applicants from 15 to 30, \$40, and an additional charge of \$3 for an additional year over 30 years; after the 40th year the extra charge is \$4 per year.

Q. The initiation has varied in the court of years? A. Yes.

Q. In prior years the initiation fee was far less?

A. Yes, \$5 and \$10.

Q. The rise in cost has affected that, too?

A. Yes.

Mr. Dessouslavy: Whenever the dues have been increased the increase has been made because the hospital had been losing and it was absolutely necessary?

The Witness: Yes.

Miss Phillips: Q. Was that voted on by the membership itself, or by the board of directors?

(Testimony of Edward B. Pomme.)

A. It was decided by the membership.

Q. By the membership itself?

A. By the membership.

Miss Phillips: I think that is all.

The Court: Is there any further testimony?

Mr. Dessouslavy: Yes; we will have some more documentary evidence, and I will call Mr. Bergerot as a witness.

Miss Phillips: I have another question.

Q. Is there any situation in which a non-member has ever attempted to have an indigent person as a life boarder? A. Sometimes, yes.

Q. Have you ever had a person who is not a member at all admitted to the old people's home?

A. Yes. [104]

Q. Have you ever had a person who was not a member admitted as a life boarder? A. Yes.

Q. He pays, does he not?

A. He makes a payment, but it rests on the human equation rather than anything else.

The Court: We will be in recess now until two o'clock.

(Thereupon a recess was taken until 2:00 p.m. this date.)

Tuesday, June 7, 1944—2:00 P. M.

Miss Phillips: I would like to ask the witness a few more questions, if I may.

EDWARD B. POMME

resumed.

Cross-Examination (continued)

Miss Phillips: Q. Mr. Pomme, do you attend the meetings of the board of directors?

A. Practically all.

Q. May I ask if the board of directors has rejected applications for membership? A. Yes.

Q. On what ground?

A. On the ground they have not been qualified under the bylaws, they did not meet the requirements set forth in the bylaws, that they are not French or do not speak French, or are not of French descent, and there is also some they refuse on account of examination.

Q. Sometimes a person may apply who is over age?

A. Over age, and also the physical condition.

Q. That is, the board requires a medical examination before a person becomes a member?

A. Yes.

Q. If he were suffering from some terrible disease he would not be admitted; would that be right?

A. Yes.

Q. As a practical matter has the board of directors to your knowledge ever placed a limitation on the number of memberships? A. Never. [106]

(Testimony of Edward B. Pomme.)

Q. As a practical matter, to your knowledge has the board of directors ever figured what was the maximum number of members that could be accommodated? A. Not to my knowledge.

Q. Mr. Pomme, do you know whether the board of directors has ever fixed a number which would be the limit which they could satisfactorily accommodate?

A. No, they never have, I am sure of that.

Q. To your knowledge has the board of directors ever declined an application on the ground that they had enough members?

A. No, they never have.

Q. Now, as a matter of policy is it the practice of the board of directors to wish to extend its membership?

A. I do not think so. The board of directors took them as they came, and there is no policy in that respect at all. [107]

Q. You testified that the board of directors had never had a drive for members.

A. That is correct.

Q. It has never paid a commission for getting new members? A. That is right.

Q. Have you ever had as many as 10,000 members in the past? A. Not exactly.

Q. Have you ever had as many as 9800 members?

A. Yes, we had more than that.

Q. You had pretty close to 10,000? A. Yes.

Q. Mr. Pomme, do you know why the Community Chest did not give a contribution last year?

(Testimony of Edward B. Pomme.)

A. I am not familiar with that, I don't know very much about it.

Q. Would you know whether the board of directors notified the Community Chest that they did not want a contribution?

A. I think the Community Chest notified the board of directors that conditions were such that they could not.

Q. You think the Community Chest notified the hospital? A. Yes.

Q. That conditions were such that they could not continue the contribution, is that it? A. Yes.

Q. Mr. Pomme, have you a breakdown or computation which would show the number of patient days in the hospital during the last year or so, or during the last five years?

A. I have not.

Q. Can you give it to us?

A. I have not got the figures with me, but I think Mr. Dessouslavy has them.

Q. Let me ask you what you mean by patient days. I know what [108] I think it is, but what do you mean?

A. Patient days is the number of days that a patient has been in the hospital; if a person will be therefor thirty days that makes thirty patient days.

Q. If you had a hundred patients there for thirty days then it would be 3000? A. Yes.

Q. Mr. Dessouslavy has given me a tabulation which shows for the year ending February, 1937, patient days of members 31,327, paying members

(Testimony of Edward B. Pomme.)

15,531, and non-members 20,173. What do you mean by "paying members"?

A. Those members who pay a certain amount for the use of the room.

Q. That is a member who goes into a ward and does not pay for a ward, is that it?

A. It is not counted as a paying member.

Q. I thought you testified this morning there is now a charge for every member going into a ward of 50 cents a day.

A. That is correct.

Q. Up to six months?

A. Yes.

Q. Has that always been the case?

A. No.

Q. How long ago was that rule adopted, that every member going into a ward pays 50 cents a day?

A. I think it was since 1938, if I am not mistaken.

Q. Prior to that all of the persons going into a ward paid nothing?

A. It was absolutely free.

Q. The figures are tabulated for 1937 to 1944 inclusive, and the figures appear in the following amounts; for the year 1944 I observe we have patient days for members 6901, patient [109] days for paying members, 16,379, patient days for non-members, 46,157. That would indicate, would it not, that during the last year approximately 1/3 of the patient days were members and approximately 2/3 of the patient days were non-members?

A. That is correct.

Q. Did you make this computation?

A. Yes, I did.

(Testimony of Edward B. Pomme.)

Q. That would indicate that about 45 percent of the patient days were members and about 55 percent were non-members? A. How do you mean?

Q. Will you look at this and explain it a little bit more?

A. Yes. In 1937 there were 15,531 paying members and 20,173 non-members, making a total of 35,000. There was paying members and members 46,000. That means the members were paying 75 percent and—

Q. Somewhere around 75% of the hospital is used by members and the general public use somewhere around 25 or 30%?? A. Yes.

Q. Since 1937 those figures have varied a little bit? A. That is correct.

Q. And the last two years over 50% of the hospital space has been used by non-members and less than 50% by members, is that right? A. Yes.

Q. Mr. Pomme, prior to 1937 would you say that the history of the hospital generally showed over 50% had been used by members?

A. Yes, the larger portion, from 50 to 75%.

Q. By members? A. Yes. [110]

Q. And somewhere around 25 to 30% for non-members? A. Yes.

Q. Whereas today the figures are almost the other way? A. Yes.

Q. Is that right? A. Yes.

Q. Is that the only result of the war?

A. Well, also the charges maybe that were made to members the last few years—it must be due to

(Testimony of Edward B. Pomme.)

war, because we have a certain drop in membership, we have about 800 members in the armed forces.

Q. You had about a thousand members less than eight or nine years ago?

A. We have the same count of members, but some of those people don't come to the hospital to be treated, and they would be charged as patient days.

Mr. Dessouslavy: Q. Didn't you state that you had about 9500 members? A. 9717 members.

Miss Phillips: 9700? A. Yes.

Q. There is a variation in the scale of charges to members recently for all sort of treatments, is there not? A. Yes.

Q. That is, the charge now is a little larger than it was some five or six years ago, is that right?

A. There was no charge in prior years.

Miss Phillips: Has counsel an annual statement showing receipts and total expenses of the hospital available?

Mr. Dessouslavy: You have that in summarized form. That is Plaintiff's Exhibit 8.

Miss Phillips: That is all. [111]

Redirect Examination

Mr. Dessouslavy: That also includes the expenses of the nurses' home, does it not? A. Yes.

Q. But in figuring expenses we do not charge any rent or rental value for the buildings of plaintiff? A. No, we do not.

Q. Take a year prior to the war, what would be the average annual expense of the nurses' school?

(Testimony of Edward B. Pomme.)

A. I don't remember; maybe around \$15,000 or so.

Mr. Dessouslavy: I think that is all.

Miss Phillips: I would suggest that that statement of total patient days per annum go in evidence as plaintiff's next exhibit.

Mr. Dessouslavy: Very well.

(The statement of total patient days per annum is marked Plaintiff's Exhibit 10 in evidence.)

Mr. Dessouslavy: We offer in evidence a copy of the certificate of election of trustees of the plaintiff. It is dated May 4, 1856. It was recorded June 7, 1856, in the Office of the County Clerk. I ask that that be received as Plaintiff's Exhibit 11.

The Court: Admitted.

(Copy of certificate of election of trustees of plaintiff was marked Plaintiff's Exhibit 11.)

Mr. Dessouslavy: I offer in evidence an extract for a book written by Mr. Daniel Levy and published in San Francisco [112] in 1884; it gives some of the background. I have a copy here which is written in French and I have made a translation, and I will ask your Honor's permission to read the translation.

Miss Phillips: No objection.

Mr. Dessouslavy: That will become our Exhibit No. 12, it is in two parts.

(The extract and translation were marked Plaintiff's Exhibit 12.)

(Testimony of Edward B. Pomme.)

Mr. Dessouslavy: I will read from Mr. Levy's book:

"The Board of Directors elected in 1857 was greatly concerned with the need of furnishing the Society with a hospital which, by its size and interior design, would be in keeping with the importance to which the institution had grown. Hence, it called a meeting for the members for August 23. In the report which it had prepared on the subject, it estimated the expenses at \$25,000.

"To meet these expenses, the Society had \$5,500 in cash, and its Bush Street property valued at \$3,000, or a total of \$8,500.

"There remained the difference of \$17,000, but as there might be unforeseen expenses, the Board proposed to borrow \$20,000, and suggested the idea of issuing 400 evidences of debt of \$50 each. According to its figures, the debt could be expected to be amortized in less than eight years, thanks to the annual excess of receipts over expenses. [113]

"The report was signed: L. Galley, President; A. Nouguez and J. Caire, Vice Presidents; E. Rebard, Treasurer, Eugene Thomas and L. Mejasson, secretaries, N. Larco, A. E. Babatie, C. Roturier, A. Nouzillet, G. Mahe, T. Pons, A. Barbier, T. Voisin and G. Berger, committee.

"At the meeting there were only 75 to 80 members. As they could not agree upon certain points, it was adjourned a week.

"At the new meeting, it was decided to issue 800, instead of 400, evidences of debt of \$25 each. Mr.

(Testimony of Edward B. Pomme.)

Abel Guy agreed to collect the funds from the subscribers.

“Mr. Huerne was asked to draw up a statement of the estimated expenses for letting out the work for the new building.”

P. A. BERGEROT,

called as a witness by plaintiff; sworn

The Clerk: Will you state your name to the Court, please?

A. P. A. Bergerot.

Mr. Dessouslavy: Q. Mr. Bergerot, you reside at 1994 Jackson Street, San Francisco?

A. I do.

Q. You were born in San Francisco?

A. I was.

Q. In February, 1867? A. I was.

Q. And you have lived here nearly all of your life? A. I have.

Q. By profession you are an attorney?

A. I am.

Q. You are one of the attorneys for the plaintiff in the [114] present case, are you not?

A. I am.

Q. Was it in about 1868 that you became a member of the society?

A. I became a member in 1867.

Q. No, you were born in 1867.

A. I became a member when I was born, after I was born.

(Testimony of P. A. Bergerot.)

Q. You mean your father nominated you a member?

A. Yes, but in 1870 my folks went to Europe for health purposes and our membership was suspended until our return in 1878, and at that time I rejoined the hospital, in 1878.

Q. And since that time you have been an active member? A. All the time.

Q. Do you remember when a new hospital was built in 1894 or 1895?

A. I do, I was a member of the directors at that time.

Q. At a later date were you president of the hospital? A. I was.

Q. You have been its attorney for the past thirty or forty years? A. I have.

Q. Do you remember the financial condition which prevailed in 1894 and 1895 when the hospital was built? A. I do.

Q. Was there a condition of depression existing at that time?

A. Yes, a very severe depression.

Q. The hospital needed some money to put up buildings? A. Yes.

Q. Were the banks lending money?

A. They were not.

Q. Did you try to borrow from banks?

A. Yes. [115]

Q. Without success? A. Without success.

Q. Will you tell us whether the money was in fact raised? A. It was.

Q. How much was raised?

(Testimony of P. A. Bergerot.)

A. \$100,000 in two installments.

Q. Of \$50,000 each? A. Yes.

Q. How was that money raised? Will you explain to the Court how that money was gotten together?

A. A group of members of the French Hospital and of the French Colony in general called a meeting for that purpose.

Q. Where?

A. At the building called Union Square Hall, which is the site of the St. Francis Hotel now, on Post Street.

Q. That was on Post Street.

A. On Post Street between Powell and Mason; at that meeting it was decided to form a corporation for the purpose of raising the sum of \$100,000 to loan out to the French Hospital Society.

Q. That money was raised at that time by popular subscription?

A. By popular subscription.

Q. The name of the corporation formed was L'Union Francaise? A. Yes.

Mr. Dessouslavy: We offer a certified copy of the articles of incorporation of the L'Union Francaise.

Miss Phillips: No objection.

(The document was marked "Plaintiff's Exhibit 13.")

Mr. Dessouslavy: Q. I call you attention to the fact [116] that the articles of incorporation state that the purpose for which it was formed was to loan money exclusively to this plaintiff, a benevolent

(Testimony of P. A. Bergerot.)

corporation, that the term for which it was to exist was 25 years, that the number of its directors or trustees was to be seven; then it gives the names of the directors for the first year; the amount of the capital stock shall be \$100,000, divided into 200 shares of the par value of \$50 each; then it gives the names of the persons and societies by whom the amount has been subscribed; the total amount was exactly \$100,000.

That corporation was organized? A. Yes.

Q. And loaned \$100,000 to the French Hospital?

A. Yes.

Q. Later on when the banks were loaning money, you borrowed \$100,000 from the Hibernia Bank?

A. From the Hibernia Savings & Loan Society.

Q. And was L'Union Francaise in part later repaid by a new loan? A. Yes.

Q. But without the public subscription in 1894 you could not have proceeded with your building?

A. We could not.

Q. You are and have been familiar for many years with the bylaws of the French Hospital?

A. Yes.

Q. It has never paid any dividends or interest?

A. It never has.

Q. To your knowledge no officer or director has ever received a fee or compensation for his services?

A. He has not. [117]

Q. They have served freely and willingly and were glad to do so? A. Yes.

(Testimony of P. A. Bergerot.)

Q. By the way, you knew Mr. Daniel Levy as a boy, didn't you?

A. I knew he was Professor of French at the school I attended.

Q. Following the completion of the hospital in 1895, was there a festival of some kind?

A. Yes, a celebration at Mechanics Pavilion, the site of the present Auditorium.

Q. Were there some souvenir programs published and circulated on that occasion? A. Yes.

Q. Do you remember about what number?

A. About 25,000.

Q. Did you take any part in preparing them?

A. I did. I wrote the history of the society in that program.

Q. Your information was secured from your father in part?

A. My father, and from Mr. Daniel Levy's books.

Q. And from conversation with French people who came here in the early fifties? A. Yes.

Q. 1894 there were quite a number of French people who had come here in 1849? A. Yes.

Q. Is this the souvenir program which was published and distributed on that occasion?

A. Yes.

Mr. Dessouslavy: I think that is admissible now.

The Court: I am interested in the printing. Might I look at it?

Mr. Dessouslavy: Yes, your Honor.

The Court: That is very valuable, I think. [118]

(Testimony of P. A. Bergerot.)

The Witness: That is the only one left out of 25,000.

Mr. Dessouslavy: With your Honor's indulgence I would like to read from this:

"About 40 years ago, toward the close of 1851, at a time when San Francisco was yet in the inceptive period of its development and when the numerous seekers after fortune from all parts of the world were gathered here, a sort of population without stability and without any social or moral bond or union, a few Frenchmen conceived the idea of looking after the welfare of the sick and destitute immigrants here of their own nationality.

"In response to a call addressed to all the patriots by Mr. Etienne Derpee in the Daily Evening 'Picayune', a certain number of Frenchmen met together and organized a benevolent society. The Board of Directors of the society elected at that meeting rented in January, 1852 a small frame building on the northwest corner of Jackson and Mason Streets to temporarily receive its sick members under the direction of Dr. D'Oliveira. Later on in October, 1853, the society purchased a lot on the corner of Bush and Taylor Streets, upon which it erected at a cost of \$9659 a modern building intended for a hospital.

"Up to this period the character of the society was purely philanthropic. It extended aid and relief without distinction to all persons of French nationality, whether [119] members of the society or not. It even went farther in its charitable endeav-

(Testimony of P. A. Bergerot.)

ors and afforded succor to the unfortunate of all nationalities. But the society was not long in perceiving that its resources were not equal to its generous impulses and that it would be necessary for it to impose a limit to its liberality. The directors sought to solve their rising difficulties by introducing into their bylaws the principle of mutuality and continuing at the same time but within narrower limits its works of charity. At about this time, that is, on the 23rd of April, 1853, it turned the name into the Mutual Benevolent Society.

“These half measures, however, did not bring about the expected result of bettering the situation of the society. Two years later, on the 24th of April, 1855, impelled by the force of circumstances, the society formally decided to establish itself exclusively on the basis of mutuality. It amended its bylaws in consequence and adopted a new designation fully characterizing the *the* end which that society has never ceased to pursue, namely, the French Mutual Benevolent Society. From that date forth, a memorable date in the history of the French colony, the society began to give full scope to its renewed energy. It is true that at rare intervals, like all other similar institutions, it has had difficulties to overcome, but the [120] number of its members kept on increasing continuously so that ere long it found itself in a situation of prosperity which enabled it to purchase an immense site on Bryant Street consisting of a lot 250 feet square upon which it built a costly hospital, inaugurated on the 15th

(Testimony of P. A. Bergerot.)
of March, 1858. This building was only one story in height but it was a great and notable improvement upon the hospital of the society previously located on Bush street.

“In less than ten years the hospital had outgrown its original capacity and the society was obliged to construct an additional story upon that old building. The new structure planned by Mr. Prosper Huerne, the architect, now presented an imposing appearance. The entire cost amounted to \$71,500, quite a large sum for the period.”

We now offer in evidence a deed to the hospital property on Geary street. This is a deed between Antoine Borel and the plaintiff. It was recorded on the 3rd of October, 1899.

Q. I believe the complaint alleges that the nurses' school which the hospital now conducts is the first nurses' school opened on the Pacific Coast.

A. Yes.

Q. Will you explain to the Court how that came about?

A. When the new hospital on Geary Street was completed in 1905—

Q. (Interrupting) 1895?

A. 1895—the board of directors at that time were confronted with the fact that we had no nurses—no hospitals had any nurses other than ordinary employees to do [121] nursing and cleaning and all the other types of work connected with the maintenance of the respective hospitals, and it occurred to me that we ought to have a scientifically-trained nurse

(Testimony of P. A. Bergerot.)

to take care of the sick exclusively, so I convened a meeting of the directors of the different existing hospitals in San Francisco and put up the proposition to them of creating a nurses' school in each hospital; my proposition did not seem to be met with much approval on account of the expense connected with it, but the French Hospital Society did not drop the idea; we went forward of our own volition and for our own account, to create and establish a school of nurses, and that was the first school of nurses created west of Chicago.

The Court: What year was that Mr. Bergerot?

A. 1896.

Mr. Dessouslavy: Q. You were a director of the hospital in 1895, you were president some years later, and you have been their attorney for many years?

A. Yes.

Q. Will you tell the Court in your opinion whether in the absence of gifts and donations plaintiff could have acquired its present plant or furnished the service it now affords.

A. No, it would have been practically impossible to do so.

Q. That has been vital to the hospital's growth?

A. Yes.

Mr. Dessouslavy: I think that is all. You may cross-examine.

Cross-Examination

Miss Phillips: Q. Mr. Bergerot, I am very much interested [122] in your account of this being the first nurses' school west of Chicago. When you

(Testimony of P. A. Bergerot.)

speak of the scarcity of nurses in 1895, do you mean that the trained nurses here were trained in the East, or elsewhere?

A. We had practically no trained nurses. The nurses were all of the ordinary caliber.

Q. What you would call practical nurses?

A. They not only did nursing but did all of the rest of the work connected with a hospital.

Q. There were some trained nurses, were there not? A. Yes.

Q. But they were trained in the East?

A. They were called—no, they were not scientifically trained. They were what we call practical nurses; there were practically no scientifically trained nurses at that time.

The Court: Q. Do you know when St. Luke's School of Nurses was organized here?

A. A long time after our hospital organized a nurses' training school, several years after that; nearly all of the hospitals started after the nurses graduated from our school; they were very much in demand all over the State of California, and then all of the other hospitals followed suit and established nurses' schools in their hospitals.

Miss Phillips: Q. The deed of Mr. Borel to the Geary Street lot, Plaintiff's Exhibit 14, was in 1889. You were associated with the hospital at that time, were you? A. Yes.

Q. Was Mr. Borel's deed a deed of gift?

A. No, it was for a consideration. [123]

Q. That is, was it an ordinary sale of property?

(Testimony of P. A. Bergerot.)

A. It was a sale of property.

Q. A sale of property? A. Yes.

Q. You mentioned that \$100,000 was raised in 1894 by the L'Union Francaise? A. In 1895.

Q. That was for the purpose of building the existing hospital? A. Yes.

Q. That money was subsequently paid back to the L'Union Francaise?

A. Paid back by a loan which we received from the Hibernia Savings & Loan Society.

Q. That was after the depression had gone by temporarily? A. Yes.

Q. Had there ever been a mortgage on the property? A. Yes.

Q. There have been mortgages?

A. There is a mortgage of the Hibernia Savings & Loan Society.

Q. Is that the only mortgage?

A. That was the only mortgage we ever had.

Q. What did those mortgages aggregate, did one take the place of the other?

A. No. The mortgage to the L'Union was \$100,000, and when we paid that off we borrowed from the Hibernia Bank I think a total of \$125,000, if my memory serves me right.

Q. Where did the society obtain the funds to retire the mortgage to the Hibernia Bank?

A. Mostly from legacies and bequests that came in subsequently; we got one bequest of \$200,000 subsequent to that *subsequent to that* from Mr. Sabatie.

(Testimony of P. A. Bergerot.)

Q. That would be listed in the list of gifts that has already been introduced in evidence?

A. Yes.

Q. Mr. Bergerot, can you tell us what the original cost of the hospital out there on Geary Street, the first initial plant, you might say, that was built in 1895, or '96?

A. No.

Miss Phillips: Perhaps Mr. Pomme could give me that information. I would like to have that in the record if it is possible.

Mr. Dessouslavy: Probably Mr. Pomme would know. You paid Mr. Borel about \$49,000 for the land?

Mr. Pomme: \$47,500.

Miss Phillips: This shows that the directors were authorized to spend \$200,000, which would be in addition to the land.

Q. Mr. Bergerot, I asked Mr. Pomme with respect to the policy of the Board of Directors as to a limit on membership.

A. That never was discussed or established.

Q. To your knowledge have members ever been declined for membership, because the organization felt it had enough members?

A. Never.

Q. It has declined them because of the health or because of descent qualifications, is that right?

A. Yes.

Q. But never because the organization was considered to be large enough?

A. Never.

Q. You at the present time know of no limitation to the size of the institution?

A. No.

(Testimony of P. A. Bergerot.)

Q. So far as you know, any person in San Francisco can join if he can meet the requirements?

A. Yes. [125]

Q. And can pay the dues? A. Yes.

Miss Phillips: That is all.

Mr. Dessouslavy: No further questions.

Plaintiff rests.

Miss Phillips: The government offers no evidence other than the evidence which has already been submitted and the pleadings.

(Thereupon the case was submitted on briefs to be filed 10, 10 and 5.)

[Endorsed]: Filed Feb 28 1945. [126]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH THE
DEFENDANT INTENDS TO RELY ON
APPEAL.

Defendant hereby designated the points on which defendant intends to rely on the appeal of said cause to the United States Circuit Court of Appeals for the Ninth Circuit, this designation to be filed with the transcript of the record:

The District Court erred in rendering the following Conclusions of Law:

(a) That plaintiff is now, and ever since August 14, 1935, has been, a charitable corporation within the meaning of Section 811 (b)(8) of Title VIII and of Section 907 (c)(7) of Title IX of the Social

Security Act approved August 14, 1935, and of the corresponding provisions of the Federal Internal Revenue Code; [127]

(b) That plaintiff is entitled to judgment against defendant for the sum of \$35,269.85 with interest as provided by law at the rate of six per centum per annum on the various portions thereof hereinafter set forth from the following date, viz.: (The dates and amounts of payments are set forth in the judgment and are not repeated here);

(c) That plaintiff is entitled to judgment for its costs of suit.

FRANK J. HENNESSY,
United States Attorney,
Attorney for Defendant.

[128]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

United States of America,
State and Northern District of California,
City and County of San Francisco—ss.

R. B. McMillan, being duly sworn, deposes and says:

That his business address is 422 United States Post Office and Courthouse Building, Seventh and Mission Streets, San Francisco, California; that he is a citizen of the United States and a resident of the City and County of San Francisco; that he is over the age of eighteen years, and not a party to the above entitled cause; that on the 5th day of April,

1945, he placed a copy of the within Statement of Points on which the Defendant Intends to Rely on Appeal in an envelope addressed to Messrs. P. A. Bergerot and A. P. Dessouslavy, Attorneys at Law, 110 Sutter Street, San Francisco, [129] California, which is the office address of the attorneys for La Societe Francaise De Bienfaisance Mutuelle, a corporation, sealed said envelope, and deposited it in the United States Mail at San Francisco, California, with the postage thereon fully prepaid; that there is delivery service by United States mail at the place so addressed, and regular communication by United States mail between the place of mailing and the place so addressed.

R. B. McMILLAN

Subscribed and sworn to before me this 5th day of April, 1945.

[Seal] J. P. WELSH

Deputy Clerk, U. S. District Court, Nor. Dist. of California.

[Endorsed]: Filed Apr 5 1945. [130]

[Title of District Court and Cause.]

ORDER FOR TRANSMITTAL OF ORIGINAL
EXHIBITS

It Is Hereby Ordered that the Clerk of the above entitled Court transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, for use in the appeal of this case, all exhibits introduced at the trial of the above entitled cause.

Dated: April 6, 1945.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Filed Apr 6 1945. [131]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, UNITED STATES
DISTRICT COURT, TO TRANSCRIPT OF
RECORD ON APPEAL.

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing 131 pages, numbered from 1 to 131, inclusive, contain a full, true and correct transcript of the records and proceedings in the case of *La Societe Francaise Bienfaisance Mutuelle*, a corporation, Plaintiff, vs. United States of America, Defendant, No. 22967 S, as the same now remain on file and of record in the office of the Clerk of said Court, and that the same constitutes the Record on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing Transcript of Record is \$22.70; that the said amount has been charged against the United States of America.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at

San Francisco, California, this 7th day of April,
A.D. 1945.

[Seal]

C. W. CALBREATH,
Clerk.

By M. E. VAN BUREN
Deputy Clerk. [132]

[Endorsed]: No. 11029 United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. La Societe Francaise de Bienfaisance Mutuelle, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed April 9, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11029

LA SOCIETE FRANCAISE DE
DE BIENFAISANCE MUTUELLE,
a corporation,

Plaintiff and Appelle,

vs.

UNITED STATES OF AMERICA,
Defendant and Appellant.

DESIGNATION OF RECORD TO BE
PRINTED

To the Clerk of the United States Circuit Court
of Appeals for the Ninth Circuit:

The appellant designates all of the record on ap-
peal as certified by the Clerk of the District Court,
and docketed herein;

Plaintiff's Exhibits 5, in three parts, 7, 8, and 9,
for printing; the portions of Exhibit 5, Parts 1
and 2, which are in English are only to be printed.

Dated: April 9, 1945.

FRANK J. HENNESSY,

United States Attorney

R. B. McMILLAN,

Assistant United States

Attorney

Attorneys for Defendant and
Appellant.

[Title of Circuit Court of Appeals and Cause.]

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State and Northern District of California,
City and County of San Francisco—ss.

R. B. McMillan, being duly sworn, deposes and says:

That his business address is 422 United States Post Office and Courthouse Building, Seventh and Mission Streets, San Francisco, California; that he is a citizen of the United States and a resident of the City and County of San Francisco; that he is over the age of eighteen years, and not a party to the above entitled cause; that on the 9th day of April, 1945, he placed a copy of the within Designation of Record to be Printed in an envelope addressed to Messrs. P. A. Bergerot and A. P. Desouslavy, Attorneys at Law, 110 Sutter Street, San Francisco, California, which is the office address of the attorneys for La Societe Francaise De Bienfaisance Mutuelle, a corporation, sealed said envelope, and deposited it in the United States Mail at San Francisco, California, with the postage thereon fully prepaid; that there is delivery service by United States mail at the place so addressed, and regular communication by United States mail between the place of mailing and the place so addressed.

R. B. McMILLAN

Subscribed and sworn to before me this 9th day of April, 1945.

[Seal] FRANK H. SCHMID

Deputy Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed April 9, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT SHALL RELY ON APPEAL.

The appellant hereby adopts the Statement of Points filed in the United States District Court, appearing in the Transcript of Record, as the points on which appellant will rely on the appeal of this case.

Dated: April 9, 1945.

FRANK J. HENNESSY,
United States Attorney

R. B. McMILLAN,
Assistant United States
Attorney,
Attorneys for Defendant and
Appellant.

[Title of Circuit Court of Appeals and Cause.]

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State and Northern District of California,
City and County of San Francisco—ss.

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R. B. McMILLAN

Subscribed and sworn to before me this 9th day
of April, 1945.

[Seal]

FRANK H. SCHMID

Deputy Clerk, U. S. Circuit Court of Appeals for
the Ninth Circuit.

[Endorsed]: Filed April 9, 1945. Paul P. O'Brien,
Clerk.

